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| 22 | February 22, 2008 | |
| 23 | THE COURT: Dr. Olsen, if you will retake the stand. | |
| 24 | Mr. George, you may resume. | |
| 25 | MR. GEORGE: Thank you, Your Honor. | |

1 of a grower's file, but there was also testimony that Peterson
2 didn't endorse it. And it was just a resource for the growers,
3 but Peterson isn't adopting this language as its own.

4 MR. BULLOCK: Judge, just very quickly, I call the
5 Court's attention in that regard to the second page which is
6 the letter from the president of Peterson Farms at that time.

7 THE COURT: I saw that.

8 MR. BULLOCK: And he writes that it is important to
9 provide you with the most up to date information on water
10 quality information which will serve as a tool in managing your
11 poultry operations.

12 THE COURT: I saw that.

13 MR. BULLOCK: I will now call Dr. Robert Taylor.

14 CHARLES ROBERT TAYLOR

15 Called as a witness on behalf of the plaintiffs, being first
16 duly sworn, testified as follows:

17 THE COURT: State your full name for the Court,
18 please.

19 THE WITNESS: My full name is Charles Robert Taylor.

20 THE COURT: Thank you, sir. Mr. Bullock, you may
21 inquire.

22 DIRECT EXAMINATION

23 BY MR. BULLOCK:

24 Q. Where do you live, Dr. Taylor?

25 A. I live in Opelika, Alabama.

1 Q. And what's your employment?

2 A. I'm employed by Auburn University.

3 Q. And what's your position there?

4 A. I have a position with an unusual title. The title is
5 eminent scholar, it's an endowed chair.

6 THE COURT: That's a title all of us would like.

7 Q. (By Mr. Bullock) Where and when did you obtain your PhD?

8 A. I obtained my PhD in 1972 at the University of Missouri,
9 Columbia campus.

10 Q. And in what subject was that?

11 A. Agricultural and resource economics.

12 Q. Have you had a tenured position in agricultural economics
13 at any other universities?

14 A. Yes, I've been tenured at the University of Illinois,
15 Texas A&M University, Montana State University and now at
16 Auburn University.

17 Q. How long have you been at Auburn?

18 A. Almost 20 years.

19 Q. Have you authored any peer reviewed articles in your
20 field?

21 A. Yes, I have.

22 Q. And could you give us some view as to the scope of those?

23 A. The scope, the early work dealt with fertilizer as an
24 environmental quality factor, pesticide policy, farm programs
25 and on and off bioenergy evaluations.

1 Q. And the later part of your work?

2 A. For the last 10 or 15 years, a significant part of it has
3 dealt with the poultry industry.

4 Q. Have you served on the editorial board of any scholarly
5 journals?

6 A. Yes, I have.

7 Q. And could you tell us of that experience?

8 A. I've been on the editorial board or editorial council of
9 five journals, including the American Journal of Agricultural
10 Economics.

11 Q. Now, what is the American Journal of Agricultural
12 Economics?

13 A. It's the top journal in my field.

14 Q. Have you served in any elected leadership positions in the
15 field of agricultural economics?

16 A. In 1998, I was elected to be on the executive board of our
17 national ag-econ association which was a three-year term.

18 Q. You said earlier that your later work has been focused on
19 the poultry industry. What's been the nature and extent of
20 that study?

21 A. The nature and extent has just dealt with the economic
22 structure of the industry.

23 Q. And have you ever done any work for the EPA?

24 A. I've done work on and off for EPA throughout most of my
25 professional career. I had a grant in 1976 and '77 on economic

1 understands the context of Dr. Taylor's testimony, it goes to
2 the arguments advanced from page 14 to 17 of the Plaintiffs'
3 brief in support of the motion for preliminary injunction.

4 Q. (By Mr. Bullock) Within the poultry industry, what is the
5 extent of vertical integration?

6 A. It's almost completely vertically integrated and has been
7 for decades. USDA statistics show something like 95 percent of
8 the poultry industry is vertically integrated. The remaining 5
9 percent is largely some organic operations, pastured poultry
10 and natural poultry in some niche marketing.

11 Q. What do you mean by niche marketing?

12 A. Small special markets for a special commodity such as an
13 organically-grown chicken or what they call pastured poultry.

14 Q. Would you look at 430 which is in front of you or -- I'm
15 sorry, 443. What is that, Doctor?

16 A. It is a chart showing the vertical integration in the
17 broiler industry.

18 Q. Okay. And if you need to, if it would help, I think the
19 Court will allow you to step down, but if you could explain
20 what that is suggesting.

21 THE COURT: You may step down, if you'd like, sir.

22 A. This shows the organization of the commercial poultry
23 industry. We really start with a genotype in baby chicks and
24 go through production and grow-out houses, largely so-called
25 contract growers, some grow-out operations owned by the

1 integrators, then to processing where the chicken is processed.
2 Some whole processed birds are sold, but then also some are cut
3 up into pieces and sold different ways. Then a marketing
4 division and then onto the final consumer. There's actually
5 some other levels in between the market division and the final
6 consumer that aren't shown, but it shows the vertical
7 integration of production and processing.

8 Business office means the poultry company or the
9 poultry integrator. They decide on the genotype of bird that
10 will be grown, sometimes called breeds, sometimes called
11 strain, provide baby chicks to the grow-out houses. They
12 decide on the type of chick, the number of chicks, when the
13 chicks are delivered. Over on the other side, it illustrates
14 the feed mill. The integrator decides on the type of feed and
15 when that will be delivered to the grow-out houses, when the
16 feed ration will be changed and --

17 Q. (By Mr. Bullock) Now, just before you drop down, you also
18 have, between the hatchery supply farm and the grow-out, flock
19 service. What is that about?

20 A. These are representatives that work for the individual
21 integrators. Generally they visit each house once a week and
22 then report back to the integrator and make recommendations or
23 mandates to the growers on what needs to be done for that
24 flock.

25 Q. Okay. And from there it goes to the processing plant;

1 correct?

2 A. Correct.

3 Q. Now, who decides when those birds go to the processing
4 plant?

5 A. The integrator.

6 Q. Okay. And within this scheme, who -- while the bird is at
7 the grow-out, who owns the bird?

8 A. The integrator owns the bird. The integrator owns the
9 feed.

10 Q. Okay. Are there other things that we ought to learn from
11 that relative to the issue of the control over the operations
12 of the grow-out farm?

13 A. Well, the integrator controls the chicks, when they are
14 delivered, the type of feed. They control the number of chicks
15 delivered to each house. They control when the birds are
16 picked up for processing. They control when the next batch of
17 chicks is delivered. And these are usually grown under
18 contracts, so-called contracts.

19 Q. Okay. Now, what -- I think you can probably sit down
20 again. Now, within -- when we're talking about the issue of
21 the -- at the grow-out farm, what is the nature of the control
22 over the person who is supervising or even owns that farm?

23 A. The integrator controls almost all aspects. They also
24 control specification of the houses and the equipment in the
25 houses. The grower must follow recommendations and sometimes

1 mandates made by the integrator and follow the flock
2 servicemen. Generally the decision or the type of work that a
3 grower has to do is to go to the house daily, make sure feed
4 and water are being distributed properly, check for dead birds
5 and things, and pick up dead birds.

6 Q. Do you know from your study whether the poultry industry
7 in northwest Arkansas and northeast Oklahoma is vertically
8 integrated?

9 A. Yes, it is.

10 Q. Now, this particular drawing came from Avian Advice; is
11 that correct?

12 A. That is correct.

13 Q. That's the reason why the exhibit shows Avian Advice?

14 A. Yes.

15 Q. What is Avian Advice?

16 A. Avian Advice is what I would call an outreach publication
17 by the college of agriculture. I think it's called division of
18 agriculture in the poultry science department at the University
19 of Arkansas. It's a periodical.

20 Q. Now, what role do the contracts play in terms of the
21 control that you've described over the operations on the
22 individual farms?

23 A. Well, economic payback period for a poultry house and
24 equipment in the house is on the order of 20 to 30 years. Most
25 of these contracts are very short term. The dominant contract

1 nationally is for a single flock of birds which will be in a
2 house for 40 to 60 days. A few now go for longer terms, but
3 the contract terms are dictated by the integrator.

4 Q. Okay. So under the contract, I take it that when we talk
5 about who owns the birds, those types of things are provided
6 under the contract?

7 A. Yes.

8 Q. Okay. What about feed?

9 A. Feed is also provided by the integrator.

10 Q. Okay. And is that generally specified in the contract?

11 A. Yes, and it's generally specified that the grower cannot
12 get any other feed and give it to the birds.

13 THE COURT: So a new contract is executed dominantly
14 each time a new flock is delivered?

15 THE WITNESS: No. The contract is usually for a
16 single flock, but the integrator keeps delivering new batches
17 of chicks. And this can go on typically for three or four
18 years. And then the integrator will come up with a new
19 contract that's usually for one flock of birds and that will
20 continue for a few years. So the contracts state one flock
21 only, the first flock, but then the integrator and the grower
22 keep operating under that.

23 THE COURT: Kind of a month-to-month contract kind of
24 idea?

25 THE WITNESS: Two months to two months, yeah.

1 THE COURT: All right. Well, but typically they just
2 keep operating under the contract. Now, are you saying that
3 it's only good for that first flock or are there provisions
4 that allow it to provide for subsequent flocks if no other
5 contract comes in and supersedes?

6 THE WITNESS: The only -- I'm not an attorney, but my
7 economic understanding is that the integrator is obligated to
8 provide only that first flock, but then the integrator has the
9 option of placing additional flocks.

10 THE COURT: Who typically finances the construction of
11 these houses?

12 THE WITNESS: The houses and house equipment is
13 typically financed by banks with government loan guarantees,
14 typically for 90 percent of the value.

15 Q. (By Mr. Bullock) Okay. And -- but the grower actually
16 signs that 90 percent guaranteed loan as a general matter;
17 right?

18 A. I don't know about the details of who signs it. I think
19 it protects the banker, I'm not sure it protects the grower.
20 But again, I'm not an attorney.

21 Q. In these contracts you say that now that some of them are
22 for longer term than the flock to flock that you talked about.
23 Who controls when the next flock of birds will be provided?

24 A. The integrator exclusively.

25 Q. Okay. And how important is that, that is, the term

1 between when the next -- when they pick up the last flock and
2 when they deliver the next flock, how important is that issue
3 to the grower?

4 A. As I mentioned earlier, the economic payback period on a
5 poultry house and equipment is on the order of 20 to 30 years.
6 And they have to have chicks over that full period to make a
7 decent return on labor management, capital risk, all that they
8 bring to it. And it's very important that they quickly get new
9 batches of chicks, within a couple of weeks, but the integrator
10 can decide whether it's a few days or not at all.

11 Q. Dr. Taylor, before you gave your opinions in this case,
12 did you review samples of contracts between the defendants and
13 the growers in this watershed?

14 A. Yes, I did.

15 Q. Okay. And what was the nature of that review?

16 A. I quickly looked through those and the conclusion was
17 they're similar to what I've seen in other areas of the United
18 States.

19 Q. Doctor, I've put in front of you a pleading filed in this
20 case. It's Docket Number 1535 that was filed by defendant
21 Simmons. Do you see that?

22 A. Yes.

23 Q. Let's go back to the attachment which is the third page of
24 that document.

25 A. Okay.

1 A. Simmons does not.

2 Q. What does the contract provide?

3 A. Item 20 says that the grower is obliged to dispose of
4 litter in accordance with BMPs as detailed by the nutrient
5 management plan for grower's farm, developed with appropriate
6 governmental agencies and to follow all applicable regulations
7 pertaining to litter disposal.

8 Q. In this contract, do you recall any provision relating to
9 transferring the feces which come out of Simmons' birds to the
10 grower?

11 A. This just says the grower must dispose of it.

12 Q. Okay. Now, in your study of this industry, and whether in
13 this watershed or outside, are provisions providing for the
14 transfer of the birds' feces to the ownership of the grower, is
15 that generally provided?

16 A. To go back in time, a lot of the contracts I've seen from
17 the '70's and '80's and even into the '90's did not mention the
18 word litter. It's only recently that the litter provision has
19 appeared in contracts.

20 Q. And to the extent that it's in there, is it similar to
21 what we see here?

22 A. Yes.

23 Q. Okay. Now, how does this contract compare generally with
24 the contracts that you've seen in this case?

25 A. It is similar. There's slight differences in wording from

1 Q. Okay. Now, in your affidavit, you referred to contracts
2 of adhesion. What do you understand contracts of adhesions to
3 be?

4 A. That's a legal concept and not an economic phrase. And I
5 always struggle to try to translate economic jargon into legal
6 jargon. It's my understanding that a contract of adhesion
7 occurs when there is a gross imbalance of power favoring one
8 side. The extreme being one side has the option of taking the
9 contract or leaving the contract and that's it.

10 Q. And how do these contract arrangements measure up against
11 that standard?

12 A. Growers only have the option to take a contract or leave
13 it. And when a new contract is offered, they still only have
14 the option to take it or leave it. And therefore, by my
15 definition, that's a contract of adhesion.

16 Q. Okay. And given the finance issues that you described
17 earlier, does that help inform how that discussion goes?

18 A. I'm not sure I --

19 Q. Well, that was probably more complicated than it needed to
20 be. You said earlier that the houses will be financed over a
21 number of years. The options of the grower at the time of the
22 contract renewal, are they affected by that?

23 A. Yes.

24 Q. How so?

25 A. When I refer to an economic payback period of 20 to 30

1 years, I'm using the economic concept of a reasonable or market
2 return for all that a grower brings. Loans for new house
3 construction range from seven to 15 years. And during that
4 time, growers typically don't make much for their labor and so
5 forth. They're paying off the loan. Quite often after 10 or
6 15 or 20 years, they have to make a major upgrade and quite
7 often they have to get a loan on that. But loans are generally
8 from 7 to 15 years on a house and 7 or 10 on new equipment
9 depending on the extent of the upgrade.

10 Q. Within this market today, is there a place for a grower
11 that decides that he's just going to take his houses and go out
12 and raise birds on his own without association with an
13 integrator?

14 A. Only the niche marketing possibilities I mentioned
15 earlier. But in general, they can't take a commercial broiler
16 out, raise it up to processing weight and haul it and sell it
17 at a market.

18 Q. Is there an economic term for the type of situation that
19 you've described here?

20 A. Yes.

21 Q. What is that?

22 A. Well, economists have their own jargon. Monopsony is the
23 technical economic phrase that describes it. It's a mirror
24 image of monopoly. Monopoly refers to seller's side power,
25 monopsony refers to buyer's side power.

1 Q. Dr. Taylor, does your -- maybe we ought to unwind that a
2 little. How does -- how does this apply in the poultry
3 industry?

4 A. Well, technically speaking, sometimes economists are
5 precise in terminology and use monopsony to refer to a
6 situation where there is only one buyer. Other times they use
7 it in a more generic sense to just mean the buyer has power
8 over the seller. There's another big word, oligopsony for when
9 you have a few. But basically the integrator has monopsony or
10 oligopsony power over the growers.

11 Q. How so?

12 A. Well, it's evident from the fact that no terms are
13 negotiated.

14 THE COURT: To the extent that occasionally growers
15 will switch integrators, this would more accurately be an
16 oligopsony; right?

17 THE WITNESS: Yes. To magnify on that, if I may,
18 there are some areas in the United States where there's only a
19 single integrator but this one has several, so oligopsony would
20 be a better term to use.

21 Q. (By Mr. Bullock) Does your description apply to the
22 operations of the poultry industry in the Illinois River
23 Watershed?

24 A. Yes, it does.

25 Q. What about to the defendant poultry companies in this

1 case?

2 A. Yes.

3 Q. What about differences between turkeys and chickens?

4 A. Well, there's biological differences. The turkeys, their
5 grow-out period is longer than for broilers. But for turkeys,
6 the integrator still owns the birds and the feed and makes the
7 decision about when poults will be placed. And they grow them
8 up to a certain age. It may be in part of a house or a
9 different house and then they're moved into a grow-out
10 facility. So generally the same kind of business model.

11 Q. Doctor, let's change to another area and that is the issue
12 of the decisions made by the companies. In terms of the
13 location of the poultry houses in this watershed, what is the
14 role of the integrator companies?

15 A. The integrator company decides on the location.

16 Q. How so?

17 A. Jargon in the industry, they have what they call
18 complexes. And a single integrator often has multiple
19 complexes. The complex is generally a fairly small geographic
20 area around a feed mill and/or processing plant. It's usually
21 the feed mill is the central part. And they only contract with
22 growers within a certain range of the feed mill. And it varies
23 somewhat, but 40 to 50 miles is generally as far out as an
24 integrator will grow to for a grow-out house. And it's the
25 integrator who decides where the complex will be and how large

1 it is.

2 Q. And so the companies, of course, decide where their
3 complexes are; correct?

4 A. Correct.

5 Q. And that really drives the concentration of the industry?

6 A. Yes, it does.

7 Q. And then they determine how many houses to contract with
8 in their region?

9 A. Correct. They determine who will be a grower, where in
10 the region the houses will be located and the size of the
11 complex.

12 Q. Okay. How does the northwest Arkansas and northeast
13 Oklahoma poultry industry compare to those in other areas of
14 the country?

15 A. It's highly concentrated. There are a few other areas
16 where poultry is also highly concentrated.

17 Q. What would be other comparable areas?

18 A. One where they're highly concentrated is known as the
19 Delmarva area that's in Delaware, Maryland and Virginia. The
20 Sand Mountain area of north Alabama is highly concentrated. The
21 far north part of Georgia has a concentrated area. And there's
22 one in south central Mississippi that's concentrated and a few
23 others.

24 Q. Now, let's go to the role which poultry waste or poultry
25 litter -- once the house is cleaned, does that play any further

1 role in the production of the poultry?

2 A. No, it does not.

3 Q. And do you know what the most common manner of disposal of
4 poultry waste is in this area?

5 A. Nationally and in the IRW, it's land application.

6 MR. BULLOCK: Okay. I have nothing further. I'll
7 surrender the witness.

8 THE COURT: Mr. Elrod.

9 MR. EDMONDSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. ELROD:

12 Q. Dr. Taylor, we are meeting for the second time; is that
13 correct, sir?

14 A. Correct.

15 MR. ELROD: Your Honor, I guess you had the impression
16 that you yourself have an endowed chair and tenure.

17 THE COURT: No one has ever called me an eminent
18 scholar, Mr. Elrod.

19 Q. (By Mr. Elrod) Dr. Taylor, this is not the first time
20 that you have testified against poultry companies, including
21 Tyson Foods; is that correct, sir?

22 A. Correct.

23 Q. And you'll agree with me that the last time you testified
24 against Tyson Foods was in a case in Alabama in federal court;
25 is that correct, sir?



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| Oklahoma Attorney General's Opinions | | | | | | |

**Question Submitted by: The Honorable Kenneth Corn, State Representative,
District 20
2001 OK AG 17
Decided: 04/11/2001
Oklahoma Attorney General's Opinions**

Cite as: 2001 OK AG 17, ____

¶10 This office has received your letter requesting an official Attorney General Opinion in which you ask, in effect, the following questions:

1. Are contract growing arrangements "contracts by adhesion" under Oklahoma law?
2. Which state's law governs the contract – the state where the integrator has its legal place of business or corporate headquarters, or the state where the contract is initiated or performed?
3. Under these contracts are the contract growers considered to be independent contractors or employees of the integrator?

I. Introduction

¶11 One of the most significant changes in agriculture in recent years has been the increase in the number of farmers who serve as "contract growers." A contract grower is a farmer who raises on his own property an agricultural commodity for another, "the integrator," with the integrator typically owning the crop throughout the process. Thus, in the livestock context, contract growers are paid to raise the integrator's livestock in the contractor's barns with the integrator typically supplying not only the animals but also the food and medicine necessary to their growth. See *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 395 (1996). In the seed context, integrators provide contract growers with seed that the contract growers plant. The contractors tend the crop and then, at harvest, return to the integrator the progeny of the crop which the integrator then sells to independent farmers who will plant it to raise food or other cash crops. See *Delta & Pine Land Co. v. Sinkers Corp.*, 177 F.3d 1343, 1346 (Fed. Cir. 1999).

II. Adhesion Contract

¶12 You first ask whether the arrangement between a contract grower and an integrator is a contract of adhesion. The Oklahoma Supreme Court has defined an "adhesion contract" as follows:

The term [adhesion contract] refers to a standardized contract prepared entirely by one party to the transaction for the acceptance of the other; such a contract, due to the disparity in bargaining power between the draftsman and the second party, must be accepted or rejected by the second party on a "take it or leave it" basis, without opportunity for bargaining

Rodgers v. Tecumseh Bank, 756 P.2d 1223, 1226 (Okla. 1988) (footnote omitted).

¶13 The fact that a contract is one of adhesion does not necessarily render it void. An adhesion contract will, however, be "interpreted most strongly against the drafter of the instrument." *Towe, Hester & Erwin, Inc. v. Kansas City Fire & Marine Ins. Co.*, 947 P.2d 594, 597 (Okla. Ct. App. 1997) (quoting *Cont'l Fed. Sav. & Loan v. Fetter*, 564 P.2d 1013, 1019 (Okla. 1977)). Any ambiguities or uncertainties in the contract will be construed in favor of the party presented with the form contract. See *Dismuke v. Cseh*, 830 P.2d 188, 190 (Okla. 1992); *Brannon v. Boatmen's Nat'l Bank*, 976 P.2d 1077, 1083 (Okla. Ct. App. 1998). Indeed, even if the terms of the adhesion contract are clear and unambiguous they will not always be enforceable. As the Supreme Court noted in

Rodgers, adhesion contracts reflect an imbalance of bargaining power. See *Rodgers*, 756 P.2d at 1226. When this imbalance of bargaining power rises to a sufficient level and is combined with contractual terms which are unreasonably favorable to the other party, the courts will refuse to enforce those terms on the grounds of unconscionability. See *Barnes v. Helfenbein*, 548 P.2d 1014, 1020 (Okla. 1976). You have indicated that integrators typically offer to their growers form contracts which the growers must either accept or reject in their entirety. If this is the case, such contracts are contracts of adhesion. Whether any particular contract between a grower and an integrator is a contract of adhesion is a question of fact which cannot be answered in an Attorney General's opinion. See 74 O.S. Supp. 2000, § 18b(A)(5).

III. Choice of Law

¶4 Your second question asks which state's law governs the contract – the law of the integrator's domicile or the law of the state where the contract is to be performed. By statute "[a] contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place where it is made." 15 O.S. 1991, § 162. Thus, as a general matter, contracts setting up contract growing arrangements will be governed by the law of the state in which the growing is to occur. The parties to a contract may, nevertheless, provide in the contract that the law of another state will govern the agreement. See *Carmack v. Chem. Bank New York Trust Co.*, 536 P.2d 897, 899 (Okla. 1975); *Williams v. Shearson Lehman Bros., Inc.*, 917 P.2d 998, 1002 (Okla. Ct. App. 1995). There are limits, however, to the power of the contract to determine the law under which it will be governed. In *Dean Witter Reynolds, Inc. v. Shear*, 796 P.2d 296 (Okla. 1990), the Oklahoma Supreme Court held that the contractual choice of the parties will not control if:

(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or

(b) **application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, . . . would be the state of the applicable law in the absence of an effective choice of law by the parties.**

Id. at 299 n.12 (Okla. 1990) (alteration in original) (quoting Restatement (Second) of Conflict of Laws § 187 (1988)). A state will be found to have a substantial relationship to the parties or the transaction if, for example, the contract is to be performed in that state or one of the parties is domiciled or has its principal place of business there. See Restatement (Second) of Conflict of Laws § 187 cmt. f (1988). Examples of "fundamental policies" as that term is used in the Restatement include policies embodied in statutes that declare certain kinds of contracts illegal and in those "designed to protect a person against the oppressive use of superior bargaining power." *Id.* at cmt. g. Whether these criteria are satisfied in a particular case depends on the terms of the contract and the identities of the parties and so is beyond the scope of an Attorney General's Opinion. See 74 O.S. Supp. 2000, § 18b(A)(5).

IV. Relationship Between the Contract Grower and the Integrator

¶5 As with any business relationship, the terms of the contracts between contract growers and integrators will vary. You have, however, detailed what you describe as the typical features of one form of contract growing arrangement – that for raising chickens. Under the terms of the typical **poultry** contract the grower agrees to raise to adulthood a flock of chicks belonging to the integrator. The flock is housed in the grower's barns and tended by the grower. The integrator owns the flock the entire time and provides all food, medicine and other supplies. When the birds are fully grown, the integrator returns for the birds and the grower is compensated under a formula that takes into account the weight and health of the birds as well as the cost of feed expended upon them. You have indicated that under these contracts the grower may hire employees but may not assign the contract or raise birds for another integrator during the contract. Typically the contract will state expressly that the grower is to be considered an independent contractor and not an employee. However, when determining whether a contract creates an employment relationship, courts look not to how a contract describes the relationship but to the actual roles played by the parties. See *Texaco, Inc. v. Layton*, 395 P.2d 393, 398 (Okla. 1964) (citing *Ottinger v. Morris*, 104 P.2d 254 (1939)).

¶6 The distinguishing characteristic of an employment relationship is control over the manner in which the work is performed. See *Tulsa County v. Braswell*, 766 P.2d 341, 342 (Okla. 1988) (citing *Clark v. First Baptist Church*,

570 P.2d 327 (Okla. 1977). As the Supreme Court has said:

An independent contractor is one who engages to perform a certain service for another, according to his own method and manner, free from control and direction of his employer in all matters connected with the performance of the service, except as to the result thereof.

Miller Constr. Co. v. Wenthold, 458 P.2d 637, 639 (Okla. 1969). While the person hiring an independent contractor is limited to specifying what he or she wants accomplished, an employer may specify and control the manner in which an employee performs the actual work itself. This is "[t]he decisive test for determining whether one is an employee or an independent contractor." *Bouziden v. Alfalfa Elec. Coop., Inc.*, 16 P.3d 450, 459 (Okla. 2000).¹

¶7 Some aspects of the contract you describe weigh in favor of a determination that the grower functions as an independent contractor under it. The grower is paid based largely on performance, rather than receiving a wage or salary, which is indicative of an employment relationship. See *Mistletoe Express Serv., Inc. v. Culp*, 353 P.2d 9, 12 (Okla. 1959). In addition the grower raises the chickens in his own barns and is free to hire his own employees. Courts have held that provision of one's own equipment and the right to engage employees are factors which militate in favor of finding that the person in question is an independent contractor. See *id.*; *Cook Constr. Co. v. Longcrier*, 405 P.2d 165, 169 (Okla. 1965) (Williams, J., dissenting).

¶8 On the other hand, a number of other elements of the contract you describe militate in the direction of an employment relationship. The integrator may terminate the contract at any time and for any reason. This has been held to be characteristic of an employment relationship. See *Mistletoe Express Serv.*, 353 P.2d at 12. Some of the tools of the job such as feed, medicine, and other supplies are furnished by the integrator which is consistent with an employment relationship. See *id.*; *Smith v. St. Francis Hosp., Inc.*, 676 P.2d 279, 281 (Okla. Ct. App. 1983). Performance under the contract may not be assigned to another, a fact which courts have held tends to indicate a master-servant relationship. See *Cook Constr. Co.*, 405 P.2d at 169, 170. Similarly, the contract you describe provides that the grower may not raise birds for himself or any other integrator. This sort of exclusivity is a badge of an employment relationship. See *Commonwealth Life Ins. Co. v. Gay*, 365 P.2d 149, 151 (Okla. 1961) (citations omitted).

¶9 Most importantly, however, the contract you describe grants the integrator a remarkable degree of control over the manner in which the chickens are raised. Although the grower provides the barns, the barns must be outfitted to the integrator's specifications. These specifications frequently include such details as the water storage capacity of the barns, the wattage of backup generators, and even the spacing of the light fixtures. The methods for raising the chicks are themselves minutely specified in the contract or an addendum to it which lays out such requirements as the maximum number of chicks per brooder, the air temperature inside the barns, and the angle of the watering tubes. The contract also provides for inspection by the integrator to ensure that these conditions are complied with. It is extremely difficult to characterize this situation as one in which the grower fulfills the contract "according to his own method and manner, free from control and direction of ... [the integrator] in all matters connected with the performance of the service, except as to the result thereof." *Miller Constr. Co.*, 458 P.2d at 639.

¶10 Although we cannot in an Opinion determine that any particular contract growing arrangement establishes an employer-employee relationship, where the contract provides in detail the manner in which the livestock or crop is to be raised, the contract grower ceases to be an independent contractor and becomes an employee.

¶11 It is, therefore, the official Opinion of the Attorney General that:

1. Contracts establishing contract growing arrangements that are presented to the grower with no opportunity to negotiate their essential terms are contracts of adhesion.
2. Absent an effective choice of law by the parties, contract growing arrangements providing for the raising of a crop in Oklahoma are governed by the laws of Oklahoma. See 15 O.S. 1991, § 162.
3. Where an integrator directs in detail the manner in which raising of the crop is to be performed the contract grower is the employee of the integrator.

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
MILES TOLBERT

ASSISTANT ATTORNEY GENERAL

FOOTNOTE:

¹ *Bouziden* is only the most recent in a long line of cases that have described the control of the work done as "the decisive test" in determining whether a employment relationship exists. See, e.g., *Barfield v. Barfield*, 742 P.2d 1107, 1110 (Okla. 1987); *Murrell v. Goertz*, 597 P.2d 1223, 1225 (Okla. Ct. App. 1979); *Union Mut. Ins. Co v. Hill*, 356 P. 2d 336, 337 (Okla. 1960); *Yellow Cab Co. v. Wills*, 185 P.2d 689, 690 (Okla. 1947). There is, somewhat confusingly, a parallel line of cases that list several relevant factors and announce that "no one factor is controlling." See, e.g., *Duncan v. Powers Imports*, 884 P.2d 854, 856 (Okla. 1994) (quoting *Coleman v. J.C. Penney Co.*, 848 P.2d 1158, 1160 (Okla. 1993)); *Swafford v. Williams*, 863 P.2d 1215, 1217 (Okla. 1993). The apparent tension between these decisions can be resolved by reference to the seminal case relied upon by all of the "no one factor is controlling" decisions – *Page v. Hardy*, 334 P.2d 782 (Okla. 1958). That case held that "control . . . in all matters connected with the performance of the service" is the determinative issue, with the various factors offered as means of determining if such control exists. *Id.* at 784.

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| 1995 OK CIV APP 154, 917 P.2d 998, 67 OBJ 1996, | <i>Williams v. Shearson Lehman Bros., Inc.</i> Cited |
| 1979 OK CIV APP 25, 597 P.2d 1223, | <i>MURRELL v. GOERTZ</i> Cited |
| 1997 OK CIV APP 58, 947 P.2d 594, 68 OBJ 3667, | <i>Towe, Hester & Erwin, Inc. v. Kansas City Fire & Marine Insurance Co.</i> Cited |
| 1999 OK CIV APP 17, 976 P.2d 1077, 70 OBJ 1256, | <i>Brannon v. Boatmen's National Bank of Oklahoma</i> Cited |
| 1983 OK CIV APP 58, 676 P.2d 279, | <i>Smith v. St. Francis Hosp., Inc.</i> Cited |
| Oklahoma Supreme Court Cases | |
| Cite Name Level | |
| 1987 OK 72, 742 P.2d 1107, 58 OBJ 2305, | <i>Barfield v. Barfield</i> Cited |
| 1988 OK 36, 756 P.2d 1223, 59 OBJ 956, | <i>Rodgers v. Tecumseh Bank</i> Cited |
| 1988 OK 139, 766 P.2d 341, 59 OBJ 3444, | <i>Tulsa County v. Braswell</i> Cited |
| 1939 OK 401, 104 P.2d 254, 187 Okla. 517, | <i>OTTINGER v. MORRIS</i> Cited |
| 1990 OK 67, 796 P.2d 296, 61 OBJ 1946, | <i>Dean Witter Reynolds, Inc. v. Shear</i> Cited |
| 1992 OK 50, 830 P.2d 188, 63 OBJ 1289, | <i>Dismuke v. Cseh</i> Cited |
| 1993 OK 21, 848 P.2d 1158, 64 OBJ 837, | <i>Coleman v. J.C. Penney Co.</i> Cited |
| 1993 OK 141, 863 P.2d 1215, 64 OBJ 3366, | <i>Swafford v. Sherwin Williams</i> Cited |
| 1947 OK 305, 185 P.2d 689, 199 Okla. 272, | <i>YELLOW CAB CO. v. WILLS</i> Cited |
| 1994 OK 126, 884 P.2d 854, 65 OBJ 3839, | <i>Duncan v. Powers Imports</i> Cited |
| 1958 OK 283, 334 P.2d 782, | <i>PAGE v. HARDY</i> Cited |
| 1959 OK 250, 353 P.2d 9, | <i>MISTLETOE EXPRESS SERVICE v. CULP</i> Cited |
| 1961 OK 186, 365 P.2d 149, | <i>COMMONWEALTH LIFE INSURANCE COMPANY v. GAY</i> Cited |
| 1964 OK 51, 395 P.2d 393, | <i>TEXACO, INC. v. LAYTON</i> Cited |
| 1965 OK 60, 405 P.2d 165, | <i>COOK CONSTRUCTION COMPANY v. LONGCRIER</i> Cited |

| | | |
|-----------------------------------|---|-------|
| <u>1969 OK 123, 458 P.2d 637,</u> | <u>MILLER CONSTRUCTION COMPANY v. WENTHOLD</u> | Cited |
| <u>1975 OK 77, 536 P.2d 897,</u> | <u>CARMACK v. CHEMICAL BANK NEW YORK TRUST CO.</u> | Cited |
| <u>1976 OK 33, 548 P.2d 1014,</u> | <u>BARNES v. HELFENBEIN</u> | Cited |
| <u>1977 OK 96, 564 P.2d 1013,</u> | <u>CONTINENTAL FED. SAV. & LOAN ASS'N v. FETTER</u> | Cited |
| <u>1977 OK 177, 570 P.2d 327,</u> | <u>CLARK v. FIRST BAPTIST CHURCH</u> | Cited |

Title 15. Contracts

| | | |
|---------------------|-------------------------------|-----------|
| Cite | Name | Level |
| <u>15 O.S. 162,</u> | <u>Law Governing Contract</u> | Discussed |

Title 74. State Government

| | | |
|---------------------|---|-----------|
| Cite | Name | Level |
| <u>74 O.S. 18b,</u> | <u>Duties of Attorney General - Counsel of Corporation Commission as Representative on Appeal From Commission</u> | Discussed |

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA

PLAINTIFF

VERSUS

CASE NO. 4:05-CV-00329 GKF(SAJ)

TYSON FOODS, INC., ET AL.

DEFENDANTS

VIDEOTAPED 30(B)(6) DEPOSITION OF CAL-MAINE FOODS
(STEVE STORM)

APPEARANCES NOTED HEREIN

TAKEN AT INSTANCE OF: PLAINTIFF

DATE: OCTOBER 8, 2007

PLACE: YOUNG WILLIAMS, P.A.

210 E. CAPITOL STREET, STE 2000

JACKSON, MISSISSIPPI

TIME: 1:06 P.M.

REPORTED BY: TODD J. DAVIS

CSR #1406, RPR

WOOTTON REPORTING

338 Indian Gate Circle

Ridgeland, Mississippi 39157

601-898-9990

Wootton Reporting
601-898-9990

EXHIBIT

4

1 STEVEN STORM,
2 having been first duly sworn, was examined and
3 testified under oath as follows:

4 EXAMINATION BY MR. RIGGS:

5 Q. Will you state your name for the record,
6 please?

7 A. Steven Russell Storm.

8 Q. Mr. Storm, to save us a little time, let
9 me try to review my notes from the earlier
10 deposition you gave today.

11 I believe I learned that you are
12 currently vice president for operations for
13 Cal-Maine Foods?

14 A. Yes.

15 Q. And you've been in that position since
16 1988 --

17 A. Correct.

18 Q. -- approximately?

19 And you came to work for Cal-Maine
20 back in 1972 actually, and you've worked
21 continuously since then, correct?

22 A. Yes.

23 Q. And you have a bachelor's degree in
24 mathematics from Texas Tech?

25 A. Correct.

1 A. Yes.

2 Q. What are those requirements?

3 A. Our -- our general requirement was, I
4 believe, 55 degrees storage on the farm.

5 Q. How often are the eggs picked up from
6 the contract producer?

7 A. Well, it depends on the size of the farm
8 somewhat and the size of the cooler and just the
9 mechanics of all that. But minimum of two times a
10 week.

11 Q. If a producer believes that the flock of
12 hens brought to his facilities by Cal-Maine is not
13 of a quality he expects them to be, can he reject
14 that flock or any birds in the flock?

15 A. I've never known it to happen.

16 Q. If veterinary services are needed during
17 the time a producer has a flock of Cal-Maine
18 chickens, who provides those services?

19 A. Cal-Maine.

20 Q. If medications are needed by the birds,
21 who provides the medication?

22 A. Cal-Maine.

23 Q. Cal-Maine provides all the feed the
24 chickens are fed?

25 A. Yes, sir.

1 Q. Who decides what the ingredients of the
2 feed are?

3 A. Cal-Maine.

4 Q. If the producer wanted to feed a chicken
5 a different kind of feed, he would have no option
6 about it, correct?

7 A. That's correct.

8 Q. If a producer wanted a certain
9 ingredient not to be put in the feed -- speaking
10 about the egg producers -- would they have any
11 choice in the matter?

12 A. I doubt it. No.

13 Q. If he had a different idea about what
14 was in -- or the watering system, let's say, for
15 the birds, would he have any say-so in how the --
16 that's done?

17 A. I would think so. He would own the
18 watering system.

19 Q. So it's not essential to the egg
20 production that the birds get a particular amount
21 or kind of water?

22 A. Certainly, it is.

23 Q. Okay. But the company leaves that
24 entirely up to the contract producer?

25 A. You know, we -- at the time we -- we

1 Q. Right. I'm asking you about variations
2 in contracts from producer to producer based on
3 negotiations with those individual producers.

4 Does that ever happen?

5 A. It can under one other circumstance.

6 Q. What would that be?

7 A. The -- the care provided in a facility.
8 For example, a facility that provides cooling for
9 the birds in the summer, that's -- there's a cost
10 with that, and we pay more for that.

11 I mentioned earlier we had a
12 contract at one point with a producer who had a
13 small grader, and he graded and packaged the eggs
14 ready for sale. We paid more for that.

15 So we have had instances where we
16 did negotiate specifically with a...

17 Q. But the --

18 A. But our general contract was a general
19 contract.

20 Q. Okay. But the differences you pointed
21 out to me so far are in how the producer gets
22 paid. It's not in any other terms of the
23 contract.

24 Can you give me an example where
25 the other terms of the contract vary from producer

1 A. I guess anything that leaves there
2 that's not an egg.

3 Q. Okay. It would include dead birds, of
4 course?

5 A. It -- it stipulates that.

6 Q. All right. It would include, I'm
7 assuming, feathers that fall out of the bird while
8 they're there, correct?

9 A. I guess so.

10 Q. Dead rodents, perhaps, if they get into
11 the pit or something -- or in the house and die?

12 A. You know, I -- I can't argue with that.
13 Anything that's not -- yeah.

14 Q. All right. Feed that falls to the
15 floor, that's considered part of the waste, right?

16 A. I would think so.

17 Q. Do you know specifically when that
18 provision or those provisions of paragraph 3 were
19 first made part of an egg producer's contract in
20 the Illinois River Watershed by Cal-Maine?

21 A. You know, I -- I suspect it's been there
22 for the entire time that we've been there. I -- I
23 don't know if you -- we can find one that doesn't
24 include that, but...

25 Q. Does Cal-Maine do anything to verify

1 whether or not the producer is abiding by the
2 terms of paragraph 3?

3 A. The -- we have a flock supervisor that
4 would at least weekly visit the farm to be sure
5 that everything is -- looks okay and is going all
6 right. And it would become obvious to them if
7 there were deficiencies.

8 Q. Okay. Is he charged specifically by the
9 company with the responsibility of not only
10 checking on the condition of the flock but
11 checking on any environmental matters that he
12 might observe while there?

13 MR. HIXON: I would object to the form.

14 A. You know, his primary responsibilities
15 are to protect the company's assets, you know, and
16 the care of the birds, the care of the eggs.

17 But -- but also -- and, you know,
18 if -- if deficiencies were noted, it would be, you
19 know, indicated to the producer that he would need
20 to do -- improve in certain areas.

21 BY MR. RIGGS:

22 Q. Does this -- flock supervisor, I believe
23 you called this person?

24 A. Yes.

25 Q. While on the premises of a contract

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ)

TYSON FOODS, INC., et al,)

Defendants.)

THE VIDEOTAPED 30(b)(6)
DEPOSITION OF BENNY McCLURE, produced as a
witness on behalf of the Plaintiff in the above
styled and numbered cause, taken on the 15th day of
August, 2007, in the City of Fayetteville, County of
Washington, State of Arkansas, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

5

1 rather than making those objections over and over or
2 trying to read all of those sort of standing
3 objections in right now, I'm just going to make this
4 letter to counsel for the State an exhibit to the
5 deposition. 09:06AM

6 DIRECT EXAMINATION

7 BY MR. GARREN:

8 Q Mr. McClure, please state your full name for
9 the Record and to the court.

10 A Benny Lloyd McClure. 09:07AM

11 Q And are you currently employed?

12 A Yes.

13 Q For whom are you employed?

14 A George's.

15 Q And for how long have you been employed? 09:07AM

16 A Nine and a half years.

17 Q When you say George's, do you mean George's,
18 Inc., or George's Farms, Inc.?

19 A George's, Incorporated.

20 Q All right, and what position do you hold with
21 George's, Inc.?

22 A Live production manager.

23 Q Have you held any other positions in the past?

24 A Yes.

25 Q Tell me what those are. 09:07AM

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1 A I held the position of broiler manager at
2 George's.

3 Q How long was that position held by you?

4 A Five years.

5 Q Has there been any other positions then 09:07AM
6 besides those two?

7 A Not at George's.

8 Q And you've been employed previously by another
9 integrator; is that correct?

10 A That is correct. 09:08AM

11 Q Tell us that integrator and the length of time
12 that employment existed.

13 A I was employed by Tyson Foods for
14 approximately ten years.

15 Q And what was the approximate time frame in 09:08AM
16 which you were employed there?

17 A From '88 through '98.

18 Q What were the positions that you held at Tyson
19 Foods?

20 A Assistant hatchery manager, hatchery manager 09:08AM
21 and broiler grow-out manager and broiler supervisor,
22 broiler tech.

23 Q And when you say broiler tech, is that like a
24 field rep or field service tech that goes around and
25 visits the farms? 09:08AM

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1 into that contract with George's.

2 Q That's the grower's choice whether they even
3 want to enter into a contract; correct?

4 A That's correct.

5 Q But the actual terms of that contract, the 01:33PM
6 conditions under which they will perform, the grower
7 does not negotiate those terms with George's; is
8 that correct?

9 MR. GRAVES: Object to the form.

10 A That is correct. 01:33PM

11 Q Is it correct then that George's supplies and
12 delivers the birds to its growers at no cost?

13 A That is correct.

14 Q And George's owns the birds or retains title
15 to the birds throughout their life? 01:33PM

16 A That is correct.

17 Q Does George's own any of the dead birds in any
18 situation with its growers?

19 MR. GRAVES: Object to the form of the
20 question. 01:34PM

21 A As part of the contract, the grower takes the
22 responsibility for disposing of those dead according
23 to all local, state and federal rules and
24 regulations.

25 Q All right. So their job is just to get rid of 01:34PM

1 them, bury them, dispose them, incinerate, however
2 is required by law?

3 MR. GRAVES: Object to the form.

4 A To dispose of them as is required by law, yes.

5 Q Does George's pick up any dead birds for any 01:34PM
6 reason?

7 A Once we start to catch birds on a farm, for
8 example, a broiler farm, if we're going out to bring
9 those birds into the plant, once we actually start
10 the process of catching those birds, if any of the 01:34PM
11 birds die during that catching process, then we take
12 those birds in.

13 Q All right. Is George's the one that sets the
14 schedule for placement of the birds?

15 A We set the schedule while working with the 01:35PM
16 growers' needs and wishes. If a grower wants to
17 take a vacation and he lets us know ahead of time,
18 we'll to the best of our ability provide him enough
19 out time to work in his vacation between flocks or
20 if he needs to do repairs to his buildings or 01:35PM
21 whatever he needs, we try to accommodate those
22 requests.

23 Q The schedule for picking up the birds is
24 determined by George's?

25 A Yes. 01:35PM

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1 Q The actual birds that are delivered, they are
2 not chosen by the grower but picked by George's for
3 delivery?

4 A That is correct. However, on our delivery,
5 when we put the delivery schedules together, we have 01:36PM
6 programs in place to rotate chicks out of pullet
7 flocks, to rotate any byproducts that we may source.
8 We keep track of what chicks that a grower has
9 received for the last year and we make certain that
10 he doesn't get more than his share of pullet chicks 01:36PM
11 or outside purchased chicks, that those get rotated
12 around so he doesn't get stuck in a rut where he
13 gets them all the time.

14 Q So there are times where George's will
15 actually buy chicks from another supplier, provide 01:36PM
16 them to the grower -- to George's growers for
17 grow-out?

18 A There have been times when that has happened,
19 yes.

20 Q All right. Is that more the exception than 01:37PM
21 the rule?

22 MR. GRAVES: Object to the form.

23 A Yes, that is more the exception than the rule.

24 Q Does George's supply and deliver all the feed
25 to each of its grow-out farms? 01:37PM

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1 A Yes, it does.

2 Q Does it supply all the medications required
3 for the birds at the grow-out farms?

4 A If any is required, we would supply it.

5 Q Does George's supply all the vaccinations that 01:37PM
6 are required for the birds at the grow-out farm?

7 A Yes, we do.

8 Q And does George's supply all the veterinary
9 services for its birds?

10 A Yes. 01:37PM

11 Q George's in fact -- it also supplies what I
12 refer to as a service tech or a field
13 representative, field man. What term do you use at
14 George's?

15 A Serviceman is fine. 01:37PM

16 Q Serviceman, and does George's supply a
17 serviceman for use -- let me back up. First off,
18 the serviceman is an employee of George's; correct?

19 A Correct.

20 Q His duties or tasks are generally to go in and 01:38PM
21 check on the various grow-out farms on a fairly
22 regular basis?

23 MR. GRAVES: Object to the form.

24 A Generally, yes.

25 Q And the cost of that is borne by George's, is 01:38PM

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1 that correct, for the use of the service tech?

2 A That is correct.

3 Q Is it part of the responsibility of the
4 service tech to supervise and advise on the care and
5 feeding and management of the flock?

01:38PM

6 MR. GRAVES: Object to the form of the
7 question.

8 A That is correct.

9 Q Does this service tech provide periodic
10 inspection of the farm and the birds?

01:38PM

11 MR. GRAVES: Object to the form of the
12 question.

13 A He does periodically visit the farm and
14 inspect the birds.

15 Q Generally how often does that occur?

01:39PM

16 A On an average that would occur once a week.

17 Q Is part of the duties of the service tech to
18 check on the temperature control in the barns? Let
19 me rephrase that. Does he check on the temperature
20 while he's there at the barns?

01:39PM

21 A Yes.

22 Q And does he check on the controls for the
23 temperature while he's inspecting the barns?

24 A Yes.

25 Q Does he inspect the ventilation controls?

01:39PM

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1 A I want to be careful here that I don't start
2 agreeing with things when I'm not really certain
3 what you're asking. From a -- does he inspect the
4 ventilation controls? He will inspect the
5 condition, the growing conditions inside the house.

01:40PM

6 He will go in the house and he will say the
7 temperature is appropriate to produce this age of
8 bird; the air quality is good; the humidity is not
9 too high; the ammonia is not too high. That's what

10 his inspection is geared towards. Will he go and
11 physically inspect all the different pieces of
12 equipment in that house that help provide that
13 environment, no.

01:40PM

14 Q That wasn't my question either, but let me ask
15 you this then: Ventilation is important with regard
16 to raising the birds, is it not?

01:40PM

17 A Yes, it is.

18 Q And many or most of the barns have some type
19 of mechanism that controls how that ventilation is
20 managed?

01:40PM

21 MR. GRAVES: Object to the form.

22 A Some type. The types can be greatly varied
23 but some type.

24 Q If the inspector determines while he's at the
25 barn that the ventilation isn't as it should be,

01:41PM

1 will he adjust those controls to provide more or
2 less ventilation as he deems necessary?

3 A He will not unless -- if the producer is
4 there, if the contract grower is there and he asks
5 the serviceman for some assistance in learning how
6 to better operate this equipment or how to provide a
7 better environment, then the serviceman may get
8 hands-on with him teaching him how to do it. If
9 that grower is not there, then the serviceman won't
10 touch it unless he feels like that it's so far out
11 that the health and welfare of the birds are in
12 jeopardy.

01:41PM

01:41PM

13 Q Okay, but in that situation, he would
14 certainly leave a written report advising him of his
15 inspection and findings and make suggestions for
16 changes that he thinks should happen?

01:41PM

17 MR. GRAVES: Object to the form.

18 A He will leave a written report on every visit,
19 whether things are as they should be or not. In the
20 event that there was something that was so far out
21 of line that the welfare of the bird was in
22 jeopardy, as soon as he got that corrected, he would
23 make every effort to locate that grower and make
24 that grower aware of what the condition was and what
25 he did to correct it.

01:42PM

01:42PM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q Does a service tech check on the water supply
2 to the birds when he inspects?

3 A He will check and make sure that there is
4 water to the birds and that the watering systems
5 themselves are working properly.

01:42PM

6 Q And that would include perhaps even the height
7 of the nipples that service the birds for accessing
8 water?

9 A He will make note as to whether or not the
10 height of the waterers are appropriate or not.

01:43PM

11 Q In addition to checking on water, would he
12 check on the feed delivery systems for the birds
13 when he makes his inspection?

14 A Through the course of the visit, he will make
15 note of the feeders.

01:43PM

16 Q What kind of things does he look for when he
17 does that?

18 A First off are the feeders operating; is it the
19 appropriate feed depth in the pan; is the feeder --
20 does it have a hole in the tube that it's leaking
21 feed out on the floor somewhere; is the feeder
22 height set properly for that age bird?

01:43PM

23 Q It's not uncommon to have unused feed in the
24 bedding material and manure when it's removed from
25 the house?

01:43PM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Correct.

2 Q Is there -- what's the outer range that
3 logistically George's would like to see that mileage
4 be? Did I say that right? Let me say it this way:
5 How far -- how many miles out does George's prefer 02:45PM
6 the farm to be from their mill or feed production
7 area?

8 A That preference has changed over the years as
9 the cost of transportation has went up. That number
10 would currently be 30 miles, but we have a lot of 02:46PM
11 farms in production that are over 30 miles from the
12 mill and we will continue to do business with those
13 folks, but we wouldn't add a new farm today; we
14 wouldn't contract with a new grower today that was
15 over 30 miles from the mill. 02:46PM

16 Q Okay. I'm going to hand you what's been
17 marked as Exhibit 39 and ask you to familiarize
18 yourself with that and we'll ask you some questions.

19 MR. GARREN: For the Record there are a
20 couple of miscellaneous sheets in here that marked 02:47PM
21 attorney eyes only. I'm not sure why they are. But
22 you might look at those, Counsel, and see if there's
23 a reason to continue to have that designation.

24 Q Do you know what this is?

25 A It's a liquid manure permit application. 02:48PM

**TULSA FREELANCE REPORTERS
918-587-2878**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE VIDEOTAPED DEPOSITION OF
TIMOTHY MAUPIN, produced as a witness on behalf of
the Plaintiff in the above styled and numbered
cause, taken on the 15th day of May, 2008, in the
City of Wichita, County of Sedgewick, State of
Kansas, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

6

1 Bob Sanders for the Cal-Maine defendants.

2 VIDEOGRAPHER: Thank you. The witness may
3 be sworn.

4 TIMOTHY MAUPIN
5 having first been duly sworn to testify the truth,
6 the whole truth and nothing but the truth, testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. GARREN:

10 Q Please state your full name for the court. 09:03AM

11 A My name is Timothy Wade Maupin.

12 Q Are you currently employed?

13 A Yes, I am.

14 Q And with whom are you employed?

15 A Cargill Turkey Production, LLC. 09:03AM

16 Q What's your current position with Cargill
17 Turkey?

18 A Turkey Production, LLC?

19 Q Yes, sir.

20 A I'm vice-president of agricultural operations. 09:03AM

21 Q How long have you been in that position?

22 A Since December of 2003.

23 Q What's your current home address?

24 A 120 North Cardinal Lane, Wichita, Kansas.

25 Q Have you ever given a deposition before? 09:04AM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q All right. Were any portions of that
2 contract, the terms in that contract negotiated
3 between Rocco and its grower?

4 A The terms in the exact contract were not
5 negotiated.

09:23AM

6 Q Okay. Were there any other consulting duties
7 that you performed besides those that you described?

8 A During the end of 1997 I started to become
9 involved in some environmental training and work for
10 Rocco, I believe 1997.

09:23AM

11 Q Tell me what you did to become environmentally
12 trained.

13 A During that time period I started to attend
14 some meetings. Ended up -- I'm not positive of the
15 date, but I took nutrient management training and
16 certification classes in late 1997, early 1998,
17 during that time frame.

09:24AM

18 Q All right. What meetings did you attend?
19 Describe to the court what those were.

20 A There were meetings being held in that area,
21 extension-type meetings or meetings, state-sponsored
22 meetings with regard to nutrient management.

09:24AM

23 Q When you say nutrient management, is that
24 describing poultry manure, poultry waste; is that
25 what you are referring to as the nutrient?

09:24AM

TULSA FREELANCE REPORTERS
918-587-2878

1 material they handed out was voluminous on a lot of
2 subjects; correct?

3 A Yes. It was a large document.

4 Q And a lot of it dealt with handling and
5 disposition of poultry waste as the name would 01:30PM
6 imply; correct?

7 A Poultry litter, yes.

8 Q Okay. Did you ever present any materials in
9 any of the symposiums that you attended?

10 A I don't recall where. It seems to me I did 01:30PM
11 present at one of the Poultry Waste Management
12 Symposiums.

13 Q Did you assist in authoring materials that may
14 have been presented by others at any symposiums?

15 MR. EHRICH: Object to the form. 01:30PM

16 A Not that I recall.

17 Q Let's talk about Cargill in a more recent time
18 frame, all right, and so that I'm clear in
19 understanding, Cargill owns the birds that are
20 placed in the contract growers' farms; correct? 01:31PM

21 A That's correct.

22 Q And the title of those birds always remain
23 with Cargill; correct?

24 A That's correct.

25 Q When Rocco operated, did it retain title to 01:31PM

TULSA FREELANCE REPORTERS
918-587-2878

1 its birds when placed on contract grower farms, same
2 as Cargill does?

3 A That's correct.

4 Q So it didn't make any change in its
5 operational way as it pertains to that once acquired 01:31PM
6 by Cargill?

7 MR. EHRICH: Object to the form.

8 A Not in the ownership relationship with the
9 birds.

10 Q That's the intention of my contract or my 01:31PM
11 question.

12 A Yes.

13 Q Who owns the feed that is given or provided to
14 the birds for Cargill growing?

15 A Cargill. 01:31PM

16 Q And are the growers allowed to introduce any
17 feed that's not presented by Cargill to them?

18 A No. They should not feed feed that's not
19 produced by Cargill.

20 Q Does Cargill in fact grow a lot of the feed 01:32PM
21 that it uses in its poultry operations from its
22 other businesses?

23 A Don't know the answer to that.

24 Q The additives -- the additives that are placed
25 in the feed and given to the birds, that's -- those 01:32PM

TULSA FREELANCE REPORTERS
918-587-2878

1 A I don't know that those reports are actually a
2 part of the review process. Certainly it's a piece
3 of a flock supervisor's overall performance.

4 Q The performance of the flock can be related in
5 other documents that Cargill tracks as to the flock; 01:42PM
6 is that a fair statement?

7 A The flock performance can be tracked?

8 Q Yes, sir.

9 A Yes.

10 Q I believe there is a report that says flock 01:42PM
11 performance report, is there not?

12 A Yes. We track flock performance.

13 Q Is that part of the evaluation used for a
14 flock supervisor, that report?

15 A It's probably a piece of their overall flock 01:42PM
16 performance, overall performance review.

17 Q When the flock supervisor goes to the farm, is
18 it true that he will inspect and maybe advise with
19 regard to the temperature control in the barn?

20 MR. EHRICH: Object to the form. 01:43PM

21 A The flock supervisor on his visit to the farm
22 would look at temperature, that's correct.

23 Q And would they look at the ventilation and
24 controls of the ventilation?

25 A Yes. 01:43PM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q Would they look at the water supply to the
2 birds?

3 A Yes.

4 Q And that would include the height of the
5 nipples that the birds receive that water from, that 01:43PM
6 sort of thing?

7 A Yes.

8 Q And would the flock supervisor also check on
9 the delivery of the feed to the birds?

10 A Yes, there would be feed there, yes. 01:43PM

11 Q And know that it's being appropriately managed
12 for their needs?

13 A He wouldn't be involved in the actual delivery
14 of feed or that process, but he certainly would
15 know -- he or she would know if there's feed on the 01:44PM
16 farm.

17 Q And he would be able and see that it's
18 operating -- that the units that feed the feed
19 automatically to the troughs are operational, that
20 sort of thing? 01:44PM

21 A Yes.

22 Q All right. Does the flock supervisor also
23 give instruction or advice with regard to the
24 condition of the litter that's in the barn?

25 MR. TUCKER: Sorry, was in -- 01:44PM

TULSA FREELANCE REPORTERS
918-587-2878

1 MR. GARREN: The condition of the litter
2 that's in the barn.

3 MR. TUCKER: I misunderstood your word.
4 Thank you.

5 MR. EHRLICH: Did you hear the question? 01:44PM

6 A Yes, that's possible.

7 Q As part of the flock supervisor's duties, they
8 may from time to time advise of doing something with
9 the litter that's in the barn in order to improve
10 the health of the birds or for some other reason? 01:44PM

11 A They certainly could make that suggestion if
12 they felt like there was an issue there that
13 affected flock health.

14 Q Cargill supplies the catchers and the trucks
15 to pick up the birds when that's done; is that 01:45PM
16 correct?

17 A We supply those things. We don't necessarily
18 own those operations.

19 Q Okay. The grower is not doing that out of
20 pocket? 01:45PM

21 A No.

22 Q Rocco and Cargill -- let me just ask, Rocco
23 has what is referred to as a best management
24 practices for growing its birds?

25 A Yes, had. 01:45PM

**TULSA FREELANCE REPORTERS
918-587-2878**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE VIDEOTAPED 30(b)(6)
DEPOSITION OF LEASEA BUTLER, produced as a
witness on behalf of the Plaintiff in the above
styled and numbered cause, taken on the 22nd day of
August, 2007, in the City of Fayetteville, County of
Washington, State of Arkansas, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

7

1 MR. GEORGE: On the phone?

2 MR. GARREN: Jennifer? Jennifer?

3 MR. GEORGE: Jennifer Griffin for Willow

4 Brook.

5 VIDEOGRAPHER: Thank you. The witness may 09:07AM
6 be sworn in.

7 LEASEA BUTLER
8 having first been duly sworn to testify the truth,
9 the whole truth and nothing but the truth, testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. BULLOCK:

13 Q State your name, please.

14 A Leasea Dawn Butler.

15 Q Ms. Butler, how are you currently employed? 09:07AM

16 A I work for Cobb-Vantress.

17 Q And what do you do for them?

18 A I'm director of GP production.

19 Q And explain what that is.

20 A I am over all of the U.S. grandparents for 09:07AM
21 Cobb-Vantress.

22 Q And how long have you had that position?

23 A Two years.

24 Q And how long have you been with Cobb?

25 A Nine years. 09:07AM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q And how are those -- or how is the farm
2 management program communicated to the producer?

3 A Service reports.

4 Q And in addition to the service reports, is it
5 also discussions that the producer might have with 09:23AM
6 the service tech?

7 A Yes.

8 Q Now, is that the proper name? I'm talking
9 about the person from the company that comes out on
10 a periodic, perhaps weekly, basis to inspect the 09:23AM
11 facilities, look at the birds, that type of a
12 program?

13 A Service techs?

14 Q Yeah.

15 A Yes. 09:23AM

16 Q And that's the proper name for it. Now, Cobb
17 also provides all of the feed; is that correct?

18 A Yes.

19 Q Provides all of the medications that the birds
20 are to use? 09:23AM

21 A Yes.

22 Q Any type of sanitizers or chemicals used for
23 insect control, Cobb provides that; correct?

24 A Yes.

25 Q In addition to -- for the producer, the 09:24AM

**TULSA FREELANCE REPORTERS
918-587-2878**

1 and feces from Cobb?

2 MR. GEORGE: Object to form. Answer, if
3 you can.

4 A No, and the reasoning for that is, if they're
5 following the applicable laws, we feel like they're 09:31AM
6 doing with it as they should.

7 Q Well, what does Cobb do to ensure that what
8 you provide is being -- if, that is, if they are
9 following the law, how do you ensure that your
10 producers are in fact following the law in disposing 09:31AM
11 of the bedding and waste, the waste from your
12 chickens and the bedding that you purchased at the
13 end of the grow cycle?

14 A When we're alerted of an issue, we address it
15 with the grower. For instance, we had a grower in 09:32AM
16 the Eucha watershed that we were notified that they
17 did not apply the litter properly and we addressed
18 it with them, pulled our contract until those issues
19 were addressed.

20 Q In -- how frequently does your service tech go 09:32AM
21 to the facilities?

22 A Once a week; sometimes more often.

23 Q And when the service tech goes to the
24 facilities, does he make a detailed inspection of
25 them? 09:33AM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Yes. It depends on the trip, but yes.

2 Q Looks at temperature in the houses?

3 A Depending upon his trip, yes.

4 Q Okay. Condition of the litter?

5 A Once again, depending upon his trip, yes. 09:33AM

6 Q Okay, but that would be within the scope of
7 things, when it's relevant, that he's supposed to
8 look at?

9 A If he's there to inspect that, yes. There are
10 some trips where maybe he's just delivered supplies 09:33AM
11 and doesn't get into the barns or he may be there to
12 watch them feed and he doesn't make note of that
13 particular trip.

14 Q But it is his job to see to it that your
15 program is followed out; right? 09:33AM

16 A Yes.

17 Q And that's one of the purposes of his weekly
18 trips to the facility?

19 A Yes.

20 Q Now, in terms of the raising of Cobb's birds, 09:34AM
21 the company doesn't take the position that it is
22 sufficient to just tell the grower what to do and
23 leave it to the grower to do that without any
24 inspection, is it?

25 A Excuse me? 09:34AM

TULSA FREELANCE REPORTERS
918-587-2878

1 referring to grandparent?

2 A Yes.

3 Q What other types of contracts does Cobb have,

4 and I'm talking about producing contracts? I'm sure

5 Cobb has all sorts of contracts.

09:37AM

6 A Right. We have a GP pullet contract. We also

7 have a lease contract in Georgia. That's the only

8 ones I'm recalling.

9 Q All right. In your -- your company requires

10 that the barns or the grow-out facilities be cleaned

09:37AM

11 out at the end of each flock; is that correct?

12 MR. GEORGE: Object to form.

13 A Yes, unless otherwise specified. We have used

14 built-up litter in some instances.

15 Q But the contract requires it to be cleaned out

09:38AM

16 at the end of the flock; is that correct?

17 MR. GEORGE: Object to form.

18 A Yes.

19 Q Okay, and if I read your guides, they also

20 provide for cleaning out the barn at the conclusion

09:38AM

21 of each flock, don't they?

22 A Yes.

23 Q And also require that the barn go through not

24 only a thorough cleaning but actually a sanitizing?

25 A We provide that, yes.

09:38AM

**TULSA FREELANCE REPORTERS
918-587-2878**

Deposition of Kirk Houtchens - Taken July 26, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA)

Plaintiffs,)

vs.)

4:05-CV-00329-TCK-SAJ

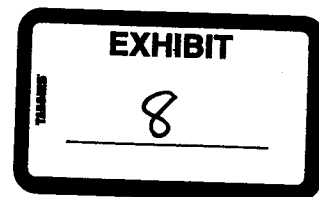
TYSON FOODS, INC., et al.,)

Defendants.)

VIDEOTAPED DEPOSITION OF KIRK HOUTCHENS

Taken at the law offices of Mitchell, Williams,
Selig, Gates & Wooyard, 5414 Pinnacle Point Drive, Suite
500, Rogers, Arkansas 72758, on July 26, 2007, at 11:36
a.m.

DONALD COURT REPORTING, INC
888-438-7836 www.getsteno.com



Deposition of Kirk Houtchens - Taken July 26, 2007

5

1 THE VIDEOGRAPHER: The time is 11:36. This
2 is the beginning of tape 1 of the deposition of Kirk
3 Houtchens. We're on the record.

4 KIRK HOUTCHENS, having been called upon to
5 testify in the form of a deposition and having been duly
6 sworn, testified as follows, to wit:

7 EXAMINATION

8 BY MR. RIGGS:

9 Q. Would you state your full name for the record,
10 please?

11 A. Casey Kirk Houtchens.

12 Q. Mr. Houtchens, for whom are you employed?

13 A. Peterson Farms.

14 Q. What is your job with Peterson Farms?

15 A. I'm the live production manager.

16 Q. How long have you held that position?

17 A. Since February of '07.

18 Q. Were you employed by Peterson Farms prior to that
19 time?

20 A. Yes.

21 Q. What was your job just before assuming this current
22 job?

23 A. I was a broiler service technician and building
24 coordinator.

25 Q. How long have you worked for Peterson Farms?

Deposition of Kirk Houtchens - Taken July 26, 2007

30

1 be a good grower versus a not so good grower?

2 A. Correct. I mean, obviously, we wouldn't contract
3 with a grower in New York City.

4 Q. Right. How -- what is about the greatest distance a
5 grower -- Peterson grower could be from a feed mill --
6 from a Peterson feed mill?

7 A. I was going -- I'm pretty sure that's 50 miles
8 radius.

9 Q. Is there, like, a company policy? Since you said it
10 that way, it makes me think maybe there's sort of an
11 unwritten policy, 50 miles would be about the maximum
12 distance that a grower could be from a feed mill?

13 A. Are you asking me if there's a company policy?

14 Q. Yeah. Not necessarily a written policy, but is
15 there sort of an understanding within the company, That's
16 about as far away from our feed mills as any of our
17 growers should be?

18 A. About 50 miles is as far we'd like to.

19 Q. Okay. Do you know where the Buffalo River is in
20 Northwest Arkansas?

21 A. Fairly certain. In the general direction.

22 Q. Okay. Uh, the upper reaches of the Buffalo River,
23 say from Boxley to Ponca, Ponca to Prewitt, that area of
24 the Buffalo River?

25 A. I'm not really familiar with it, sir.

Deposition of Kirk Houtchens - Taken July 26, 2007

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1 soil test levels, such as these?

2 A. Well, I would -- if Peterson Farms received soil
3 test levels like these, we would be hoping that he's
4 taking this out of the watershed.

5 Q. You would just hope it, you wouldn't do anything
6 about it?

7 A. Well, we wouldn't have to go out to the farm and
8 look. We -- we don't enforce the state laws. But as far
9 as a grower that -- if we have evidence or we're contacted
10 that a grower is violating the laws, then we would stop
11 taking birds on that grower.

12 Q. Has Peterson ever stopped supplying chickens to any
13 growers who have continued to spread poultry waste from
14 their grower houses on fields which contained excessive
15 phosphorus levels?

16 MR. McDANIEL: Objection. It's compound.

17 A. Not that I'm aware of.

18 Q. (Mr. Riggs continued.) Let's talk now about
19 something entirely different, the feed formulas and the
20 ingredients in the feed. That is an area you're prepared
21 to talk about?

22 A. Yes. That's correct.

23 Q. First of all, does Peterson provide all of the feed
24 to its contract growers which they use in raising
25 Peterson's chickens?

Deposition of Kirk Houtchens - Taken July 26, 2007

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1 A. Yes.

2 Q. Does Peterson determine the formulas for all the
3 feed and the types of feed which are provided to its
4 contract growers?

5 A. Yes.

6 Q. Where are the feed mills where the Peterson feed is
7 actually produced?

8 A. We have one feed mill --

9 Q. One feed mill in Decatur?

10 A. -- in Decatur, Arkansas.

11 Q. Do any of the ingredients in the Peterson feed
12 that's provided to its growers come from within the
13 Illinois River Watershed?

14 A. Not that I'm aware of, no.

15 Q. How much feed is fed annually to all of Peterson's
16 chickens, anywhere they're grown? Do you have a number
17 for that?

18 A. No, I don't have an exact number. We -- we
19 manufacture approximately 8,000 tons a week in our
20 feeders.

21 Q. And you only manufacture feed for your own chickens.
22 Correct?

23 A. We do sell some to George's.

24 Q. All right. How much of that 8,000 tons a week?

25 A. No, that'd be -- about 8,000 is about what we

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE VIDEOTAPED 30(b)(6)
DEPOSITION OF GARY MURPHY, produced as a witness
on behalf of the Plaintiff in the above styled and
numbered cause, taken on the 30th day of July, 2007,
in the City of Fayetteville, County of Washington,
State of Arkansas, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

9

1 GARY MURPHY

2 having first been duly sworn to testify the truth,
3 the whole truth and nothing but the truth, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. GARREN:

7 Q Mr. Murphy, give us your full name please, for
8 the court.

9 A Gary Jack Murphy.

10 Q And you're currently employed; is that 09:14AM
11 correct?

12 A That's correct.

13 Q For whom?

14 A Simmons Foods.

15 Q How long have you been so employed? 09:14AM

16 A Sixteen years.

17 Q And what position or capacity do you hold at
18 this time?

19 A President of poultry operations.

20 Q What other positions have you held with the 09:14AM
21 company?

22 A I was the complex manager for the Southwest
23 City, Missouri location and when I first started
24 with the company, I was the projects manager.

25 Q Where is the office that you conduct your 09:14AM

TULSA FREELANCE REPORTERS
918-587-2878

1 about, and I guess what I mean to ask is, are there
2 any other people inside of Simmons that would give
3 instructions to growers besides the service tech and
4 exclusive of a written thing coming out of the
5 office?

01:28PM

6 A Probably not as far as that level.

7 Q I'm sorry. Does your live operations manager,
8 would he have an opportunity or reason to go out and
9 give instructions to growers from time to time?

10 A That's what I was referring to as far as that
11 level of management. The next level -- there's
12 actually two levels of management, live operations
13 manager and then there's a broiler manager and then
14 a service tech.

01:29PM

15 Q So any one of those three could be in a
16 position to actually give instructions is what you
17 are telling me?

01:29PM

18 A Could be. The service tech would be the one
19 that has primary opportunity to visit with the
20 growers.

01:29PM

21 Q Based upon my taking depositions of some of
22 your growers, that service tech appears at the farm
23 at least weekly, sometimes more often?

24 A That would be correct.

25 Q All right. I believe this is the first time

01:29PM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Yes, sir.

2 Q Does Simmons own any dead birds at any time?

3 A No, sir.

4 Q Those are owned by whom?

5 A If dead birds can be owned, I guess it would 01:38PM
6 be a grower.

7 Q All right. That's -- does Simmons provide any
8 transportation to pick up or dispose of dead birds
9 for growers?

10 A No, sir. 01:39PM

11 Q Does Simmons in fact dispose of any dead birds
12 for growers?

13 A No, sir.

14 Q Does Simmons set the schedule for placement of
15 birds for a grower? 01:39PM

16 A Yes, sir.

17 Q And does Simmons set the schedule for the pick
18 up of those birds from the grower?

19 A Yes, sir.

20 Q Does Simmons determine the quality of the 01:39PM
21 birds being delivered to the individual growers?

22 A Yes, sir.

23 Q What I mean by that is the grower doesn't get
24 to go pick a flock and bring it back to his place,
25 does he? 01:39PM

**TULSA FREELANCE REPORTERS
918-587-2878**

1 A No. Could I go back and address the placement
2 of the birds?

3 Q Yes, sir.

4 A We do schedule that, but we have situations
5 where we are and do work with growers who may have a 01:39PM
6 conflict of getting birds on a certain date,
7 anything from construction to they may want to take
8 a vacation and we'll push those birds off.

9 Q Okay, but generally speaking they get a date
10 they've got to have their houses cleaned and 01:40PM
11 prepared and ready for the birds on a date that
12 Simmons normally gives them?

13 MR. ELROD: Object to form.

14 MR. McDANIEL: Form.

15 A There are schedules that are set, of which we 01:40PM
16 do work with growers on that time.

17 Q Simmons supplies all the feed to the farm for
18 the growers?

19 A Yes, sir.

20 Q And do they in fact deliver it to the growers 01:40PM
21 at no cost?

22 A Yes, sir.

23 Q Does Simmons supply all the medication used
24 for the birds?

25 A Yes, sir. 01:40PM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q Does Simmons supply the vaccinations used for
2 the birds?

3 A Yes, sir.

4 Q Does Simmons supply all the veterinary
5 services provided for the benefit of the birds?

01:40PM

6 A Yes, sir.

7 Q Does Simmons supply then a service tech as we
8 talked about before who makes these weekly or more
9 often visits?

10 A Yes, sir.

01:41PM

11 Q There's no charge for that from the grower's
12 standpoint, is there?

13 A That's correct.

14 Q Now, talking about the service techs, is it
15 correct that they supervise and advise for the care
16 and feeding and management of the flock?

01:41PM

17 A They look in on the birds and give advice to
18 the grower.

19 Q Do they inspect when they look in on the birds
20 temperature controls and/or the temperature in the
21 barn?

01:41PM

22 A On all of our houses today it's all
23 computerized and all of that information is
24 available through printouts either with the grower
25 -- primarily with the grower.

01:41PM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Typically --

2 Q Let me back up and maybe this will get us
3 quicker. Is it a wet or dry waste that comes out of
4 a breeder house versus a broiler house?

5 A It's dry but it has more moisture content than 02:29PM
6 a broiler.

7 Q You don't have facilities that generate liquid
8 waste?

9 A No, we don't.

10 Q And is Simmons in the egg producing business 02:29PM
11 for other than breeding?

12 A No, sir.

13 Q I noticed on the -- in Exhibit 31 the distance
14 from your various plants or facilities are listed.

15 Is that a mileage distance? 02:30PM

16 A Yes.

17 Q It says mileage info?

18 A Yes.

19 Q Is there a limit by which -- which one of
20 those facilities is central to determining how far a 02:30PM
21 grower can be and Simmons would contract with them?

22 A The Fairland feed mill.

23 Q How far then would Simmons go to contract with
24 somebody that is supplied from that mill?

25 A Nothing outside of a hundred miles. 02:30PM

TULSA FREELANCE REPORTERS
918-587-2878

1 A I'm not aware of anything.

2 Q Is Simmons aware?

3 A Not that I'm aware.

4 Q That would mean I as Simmons; right?

5 A I as Simmons. 03:09PM

6 Q When an investor -- let's back up. In the
7 '80's and '90's when Simmons had its own operations
8 and used contract haulers, did those contract
9 haulers actually clean the houses out themselves;
10 did they do -- did that process include putting it 03:09PM
11 in the trucks in order to haul it away?

12 A It was my understanding that there were some
13 of the contract haulers that had their own clean-out
14 crews, and there was some that actually did the
15 hauling and there were independent separate crews 03:10PM
16 for clean out. It was a combination of both.

17 Q Okay, and so Simmons didn't have its own
18 employees do the clean-out?

19 A That's correct.

20 Q What does Simmons expect or require of its 03:10PM
21 growers in the way of timing for clean out of the
22 poultry barns?

23 A Well, it's changed over a number of years.
24 Presently we would like the growers to clean out on
25 an annual basis. 03:11PM

TULSA FREELANCE REPORTERS
918-587-2878

1 with its grower?

2 A I'm not sure exactly what I did say earlier
3 this morning, but I can tell you that it's up to the
4 growers as to whether he wants to enter into the
5 contract or not.

04:07PM

6 Q They don't negotiate the terms of that
7 contract, though, do they?

8 A No, sir.

9 Q Okay.

10 A I don't disagree with that.

04:07PM

11 Q You disagree with it?

12 A I don't disagree with that.

13 Q Let's look at Exhibit 16. Have you ever seen
14 a manure management plan for water quality created
15 by the Washington County Soil and Conservation
16 District?

04:07PM

17 A Not that I can recall.

18 Q Is there anyone in Simmons -- are you talking
19 personally now or are you talking about Simmons, the
20 company?

04:08PM

21 A Personally.

22 Q Do you know whether Simmons is familiar with a
23 Washington County Soil and Water Conservation
24 District manure management plan for water quality?

25 A I don't think so but I would have to ask Joe

04:08PM

TULSA FREELANCE REPORTERS
918-587-2878

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES))
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ)

TYSON FOODS, INC., et al,)

Defendants.)

THE VIDEOTAPED 30(b)(6)
DEPOSITION OF PATRICK PILKINGTON, produced as a
witness on behalf of the Plaintiff in the above
styled and numbered cause, taken on the 20th day of
August, 2007, in the City of Fayetteville, County of
Washington, State of Arkansas, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

10

1 MR. BULLOCK: Do we have anybody on the
2 phone?

3 MS. GRIFFIN: Jennifer Griffin for Willow
4 Brook Foods.

5 VIDEOGRAPHER: Thank you. The witness may 01:02PM
6 be sworn in.

7 PATRICK PILKINGTON
8 having first been duly sworn to testify the truth,
9 the whole truth and nothing but the truth, testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. GARREN:

13 Q Please state your full name for the court.

14 A I'm Patrick Martin Pilkington.

15 Q And are you currently employed, Mr. 01:02PM
16 Pilkington?

17 A Yes, I am.

18 Q And for whom are you employed?

19 A With Tyson Foods.

20 Q How long have you been with Tyson Foods as an 01:03PM
21 employee?

22 A Working on eleven years.

23 Q What position do you currently hold?

24 A I'm vice-president of live production
25 operations. 01:03PM

TULSA FREELANCE REPORTERS
918-587-2878

1 from what you define as negotiation versus the
2 witness.

3 Q With regard to the actual terms of the
4 contract, are any of these negotiated separately
5 with the growers individually? 01:24PM

6 A We do not -- we don't negotiate, to use your
7 term, individual parts of contracts. In fact, it's
8 my understanding that we have an obligation through
9 Packers and Stockyards regulations to treat
10 similarly situated growers similarly and, in fact, I 01:24PM
11 believe that would prohibit what I think it is you
12 are asking.

13 Q Do you know a Mr. Thomas Michael Baker?

14 A I do not believe so.

15 Q Okay. You don't know whether he's been 01:25PM
16 employed by Tyson and had any knowledge with regard
17 to contracts in the past?

18 A I don't know.

19 Q Has Tyson in the past changed a term in a
20 contract as a result of a request by a grower making 01:25PM
21 that request?

22 A The only situation I can recall would be a
23 request to decrease the duration of a contract. For
24 instance, we commonly offer -- today we commonly
25 offer three-year contracts or a seven-year contract, 01:26PM

TULSA FREELANCE REPORTERS
918-587-2878

1 A No.

2 Q Does Tyson ever pick up dead birds?

3 A From the house?

4 Q At any time --

5 A Well, it's -- I'm sorry. It's the grower's 02:25PM
6 responsibility to remove dead birds or daily
7 mortality from the house.

8 Q Okay. Does Tyson generally set the schedule
9 for placement of the birds with the grower?

10 A Yes. 02:25PM

11 Q Does Tyson generally set the schedule for the
12 pickup of the birds from the grower?

13 A Yes.

14 Q Does Tyson determine the quality of birds to
15 be delivered to a grower? 02:26PM

16 A Tyson -- our intent is to deliver good quality
17 birds to all growers.

18 Q Does Tyson cull any chicks before it delivers
19 any birds to the growers?

20 A That practice is not universal but, yes, in 02:26PM
21 some hatcheries certain chicks that are deemed unfit
22 for placement or for animal welfare purposes, they
23 would be culled, yes.

24 Q Does Tyson supply and deliver all the feed to
25 each farm? 02:26PM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Yes.

2 Q Does Tyson supply all the medications used on
3 a farm for the birds?

4 A We do supply medication when needed.

5 Q Does Tyson supply all vaccinations to the 02:26PM
6 birds?

7 A We also supply vaccinations when needed.

8 Q Does Tyson supply all the veterinary services
9 used or needed for the birds?

10 A We employ and then provide veterinary services 02:27PM
11 for the growers.

12 Q Does Tyson supply a service tech or
13 representative who makes weekly or more often visits
14 to inspect the operations of its growers?

15 A Our service techs don't really inspect, but we 02:27PM
16 do have service techs that are employed, and they
17 generally have an area in which they will visit
18 farms on roughly a weekly basis.

19 Q You said they don't inspect. Do you mean they
20 don't check the temperature in the barn? 02:27PM

21 A No. What I'm wanting to clarify is that's not
22 -- their job is to advise growers and to make them
23 aware of best management practices and to help them
24 in ways that make sure their flock performs very
25 well. It's not simply an inspection role. 02:28PM

TULSA FREELANCE REPORTERS
918-587-2878

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE VIDEOTAPED DEPOSITION OF
ARCHIE SCHAFFER, produced as a witness on behalf
of the Plaintiff in the above styled and numbered
cause, taken on the 9th day of July, 2008, in the
City of Fayetteville, County of Washington, State of
Arkansas, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

11

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. BULLOCK:

4 Q State your full name, please.

5 A Archie Schaffer. 09:12AM

6 Q And, Mr. Schaffer, how are you employed?

7 A I work for Tyson Foods, Incorporated.

8 Q What's your title?

9 A Senior vice-president for external relations.

10 Q What's that involve? 09:12AM

11 A It involves overseeing the government affairs,
12 public relations, community relations and internal
13 communications for the company.

14 Q What then is your relationship with Tyson
15 Chicken, for instance? 09:13AM

16 A Well, I'm not sure exactly what Tyson Chicken
17 is to tell you the truth.

18 Q Okay. How about Cobb-Vantress?

19 A Well, Cobb -- Cobb is a wholly-owned
20 subsidiary of Tyson Foods, and I have very limited 09:13AM
21 contact with Cobb. They are a breeding company that
22 Tyson owns, but I have very little regular contact
23 with them.

24 Q Okay. How long have you been with Tyson?

25 A Seventeen years. Came to work in June of '91. 09:14AM

**TULSA FREELANCE REPORTERS
918-587-2878**

1 Q All of your -- the Tyson poultry are now grown
2 by what are known as contract growers within that
3 watershed?

4 A That's my understanding, although I'm, you
5 know, not directly involved in that, so -- but I 09:26AM
6 believe that to be the case.

7 Q And throughout the growing process, Tyson
8 continues to maintain ownership of the poultry?

9 A Yes.

10 Q They provide all of the feed? 09:27AM

11 A Yes.

12 Q And they own the feed?

13 A Yes.

14 Q And do you know when one of the birds die that
15 Tyson owns, whether Tyson continues to own that bird 09:27AM
16 or does the ownership of the carcass pass to the
17 grower?

18 MR. GEORGE: Object to the form, calls for
19 a legal conclusion. Answer, if you can.

20 A I don't know the answer to exactly who owns 09:27AM
21 the carcass. I do know that it's the responsibility
22 by contract of the grower to be -- you know, to be
23 responsible for the carcass, but I'm not sure who
24 owns it actually.

25 Q Now, and the same is true of the manure that 09:28AM

**TULSA FREELANCE REPORTERS
918-587-2878**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES))
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

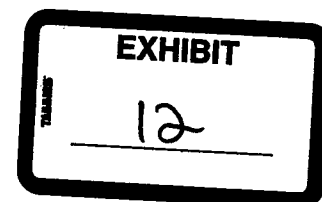
4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

VOLUME I OF THE VIDEOTAPED
DEPOSITION OF MICHAEL DICKS, PhD, produced as a
witness on behalf of the Plaintiff in the above
styled and numbered cause, taken on the 13th day of
February, 2009, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878



1 MR. BURNS: Object to form.

2 A Yes.

3 Q Do you also agree that each defendants' choice
4 is based in part on the location of the grower in
5 relation to the feed mills, hatchery or processing
6 plants of that defendant?

11:42AM

7 A Yes.

8 Q Do you agree that each defendant controls the
9 number of growers it will have in a region or
10 complex?

11:42AM

11 A Yes.

12 Q And do you agree then as a result of that,
13 each defendant controls the density of the growers
14 it will have in an area or region or it's sometimes
15 referred to as complex?

11:43AM

16 MR. BURNS: Object to form.

17 A Yes. Certainly they would exhibit a certain
18 percent of that control, correct.

19 Q Why a percentage?

20 A Well, it takes two to sign a contract.

11:43AM

21 Q Okay, but the author of the contract is made
22 from the integrator, is it not?

23 A That's correct.

24 Q And so they choose a person to give an offer
25 to; is that correct?

11:43AM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Correct.

2 Q Would you agree with me each defendant
3 controls when and how many birds are to be grown by
4 their growers?

5 A Correct. 11:43AM

6 Q Would you agree that each defendant integrator
7 sets the schedule for when birds are in or out of
8 the growers' houses?

9 A Yes.

10 Q And do you agree with me that each defendant 11:43AM
11 controls the type and size of birds in the grower --
12 I'm sorry, I'll restate that. Do you agree with me
13 that each defendant controls the type and size of
14 birds that growers will grow for that integrator
15 defendant? 11:43AM

16 A State that again.

17 Q Would you agree that each defendant controls
18 the type and size of birds the growers will grow for
19 them?

20 A Well, you know, I guess my problem is with 11:44AM
21 your word control because do they -- do they -- you
22 know, do they guide it? Yes. Obviously they don't
23 have any control over what the producers do in terms
24 of the actual production. Do you follow me?

25 Q Let me clarify my question then. 11:44AM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q All right. Would you agree with me that each
2 defendant controls the formula and supply of all the
3 feed that's used by all of the growers?

4 A Correct.

5 Q And would you agree that each defendant 11:45AM
6 controls the specification for housing and equipment
7 to be used in growing the birds?

8 A Yes.

9 Q Would you agree that each defendant integrator
10 controls all the medical and veterinarian supplies 11:45AM
11 and services that will be used by the growers?

12 MR. BURNS: Object to form.

13 A I'm not certain of that. I'm not certain of
14 that detail, what the contract states in that in
15 every case. 11:45AM

16 Q Okay. Do you know of any contract growers
17 that provide their own veterinary services to the
18 birds that are grown?

19 A I do not.

20 Q Do you know of any contract grower that 11:46AM
21 supplies its own veterinarian supplies for treatment
22 of the birds?

23 A I do not.

24 Q Do you agree with me each defendant provides
25 routine inspections and furnishes advice or 11:46AM

1 instruction by the integrator representatives to
2 assure quality of the product?

3 MR. BURNS: Object to form.

4 A Say it again. Sorry.

5 Q You're familiar with service techs that 11:46AM
6 integrators use?

7 A Right, yes, sir.

8 Q And you're familiar that they go out on a
9 regular basis, weekly, sometimes more or less,
10 correct, go out to the farms? 11:46AM

11 A Yes, sir.

12 Q And do you agree with me that the defendants,
13 in providing these routine inspections, that they
14 will furnish advice and instruction to the growers
15 on how to grow their birds? 11:46AM

16 MR. BURNS: Object to form.

17 A Let me see how I can answer that. I think
18 that's generally the case. I'm not sure that in
19 talking to the producers, that that happens on a
20 weekly basis or biweekly basis or even a monthly 11:46AM
21 basis. Is that written to be a typical practice,
22 yes. Does that help you?

23 Q Yeah. Well, I've deposed several growers in
24 this case and not a one of them told me they didn't
25 come out on a very regular basis, sometimes weekly 11:47AM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Correct.

2 Q And you have not undertaken any scientific
3 studies, survey or investigation of owners in the
4 IRW who own pastureland who refuse to use poultry
5 waste on their land and how many acres that
6 represents?

02:51PM

7 A Correct.

8 Q And you agree that historically the
9 predominant use of poultry litter has been to land
10 apply it in the IRW?

02:51PM

11 A Yes.

12 MR. BURNS: Object to the form.

13 Q Would you agree that poultry farmers generally
14 would apply it on their land or nearby neighbors'
15 land when they do?

02:51PM

16 MR. BURNS: Object to form.

17 A I don't think I could stipulate that.

18 Q Do you believe or agree that generally the
19 same land is used for application each year?

20 MR. BURNS: Object to form.

02:51PM

21 A I don't -- past or present?

22 Q Past.

23 A That's -- that may be true. I don't have any
24 -- I don't have any knowledge of that.

25 Q Let me hand you what's been marked as Exhibit

02:51PM

TULSA FREELANCE REPORTERS
918-587-2878

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE DEPOSITION OF ROBERT
SCHWABE, II, produced as a witness on behalf of
the Plaintiff in the above styled and numbered
cause, taken on the 12th day of June, 2007, in the
City of West Siloam Springs, County of Delaware,
State of Oklahoma, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

13

1 in a way that is clear and you understand it. If
2 you answer a question, can I presume then you've
3 understood it?

4 A Okay.

5 Q First off, how long have you been a poultry 10:03AM
6 grower?

7 A Thirty years.

8 Q When did you first start then?

9 A January 1977.

10 Q All right, and for whom have you been a 10:03AM
11 poultry grower during that time period?

12 A Cargill.

13 Q Has that been a continuous period since 1977?

14 A Yes.

15 Q Have you had any other integrators that you've 10:03AM
16 worked with or for?

17 MS. HILL: Object to the form, the use of
18 the term worked for.

19 Q I might explain one other thing. There are
20 going to be objections and you're entitled to go 10:04AM
21 ahead and respond but they're trying to make a
22 Record. Have there been any other integrators that
23 you've grown turkeys for or poultry for?

24 A No.

25 Q And you are a turkey grower; is that correct? 10:04AM

TULSA FREELANCE REPORTERS
918-587-2878

1 When you grow poultry, is it chickens or turkeys?

2 A It's turkeys.

3 Q Have you ever grown anything other than
4 turkeys for Cargill?

5 A No. 10:04AM

6 Q I'm going to ask you now to look at Deposition
7 Exhibit No. 1 and ask you to review that document
8 and see if you recognize it and I'll ask you some
9 questions about it.

10 A Okay. 10:04AM

11 Q There's an exhibit attached to that subpoena.
12 Have you also seen that document, three pages?

13 A Yes.

14 Q All right. Did you make a search of your
15 records to produce those things that are requested 10:05AM
16 in that exhibit?

17 A Yes.

18 Q All right, and is there anything on the
19 exhibit, the list of items that are requested, that
20 you did not find or you did not produce? 10:05AM

21 A I didn't produce my federal or state income
22 tax returns.

23 Q Okay. Is there anything else that you did not
24 produce?

25 A I produced everything I had. 10:06AM

**TULSA FREELANCE REPORTERS
918-587-2878**

1 correct?

2 MS. HILL: Object to form.

3 A Right.

4 Q And you're not allowed to provide any

5 veterinary services yourself to these birds; 10:57AM

6 correct?

7 A Right.

8 MS. HILL: Object to form.

9 Q Who determines when birds will be delivered?

10 A Cargill. 10:57AM

11 Q Who determines when the birds will be picked
12 up?

13 A Cargill.

14 Q Does Cargill come to your facility to inspect

15 or review the condition of its birds at any time? 10:57AM

16 A They have a field supervisor.

17 Q Is that what he does?

18 A Repeat the question.

19 Q Does he inspect the condition of the birds

20 when he comes? 10:58AM

21 A Yes.

22 Q And is he -- do you allow him to do that or

23 are you obligated to let him do that?

24 MR. WILLIAMS: Object to form.

25 A It's just -- 10:58AM

**TULSA FREELANCE REPORTERS
918-587-2878**

Deposition of Ray Wear - Taken July 26, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA)

Plaintiffs,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al.,)

Defendants.)

VIDEOTAPED DEPOSITION OF RAY WEAR

Taken at the law offices of Mitchell, Williams,
Selig, Gates & Wooyard, 5414 Pinnacle Point Drive, Suite
500, Rogers, Arkansas 72758, on July 26, 2007, at 9:44
a.m.

DONALD COURT REPORTING, INC
888-438-7836 www.getsteno.com

EXHIBIT

14

Deposition of Ray Wear - Taken July 26, 2007

26

1 Q. So those two boards are comprised of exactly the
2 same people?

3 A. Yes.

4 Q. And they have the same chief executive officer.

5 A. Yes.

6 Q. When Peterson Farms, Inc. contracted with growers,
7 did it impose certain requirements on the growers with
8 respect to the size and design of the houses the chickens
9 owned by Peterson were to be raised in?

10 MR. McDANIEL: Object to the form.

11 THE WITNESS: That would really be Kirk's
12 area, would it not?

13 MR. McDANIEL: If you're asking as a matter
14 of contract and you can answer the question, go ahead.

15 A. On contract --

16 Q. (Mr. Riggs continued.) It could be yours or his,
17 but tell me what you know, if you will.

18 A. We do not require a certain -- a certain size house,
19 no.

20 Q. But you would not contract with a prospective grower
21 if that grower had a house that was not to your
22 expectations, with respect to the design and size.
23 Correct?

24 A. Yes, we would.

25 Q. Well, there's a limit to how small a house you would

Deposition of Ray Wear - Taken July 26, 2007

27

1 want to contract.

2 A. Within limits, yes.

3 Q. All right. Can you tell me in general what your
4 expectations are that -- and I'm -- I'm speaking of
5 Peterson Farms, Inc. when it had contracted growers, what
6 your expectations were with respect to the size and design
7 of grower houses?

8 A. At that time, I believe it was a 40 by 400 foot
9 house.

10 Q. Did Peterson, when it contracted with the growers to
11 raise broilers, determine the number of birds that would
12 be raised in -- in each house?

13 A. Yes.

14 Q. Did it determine the kind of chickens the grower was
15 provided?

16 A. Yes.

17 Q. Did it determine the age the chickens were at the
18 time they were delivered to the grower?

19 A. Yes.

20 Q. And it decided when the chicks would actually be
21 delivered to the grower with each flock. Correct?

22 A. Yes.

23 Q. Did Peterson, when it contracted with the grower to
24 raise broilers, have requirements with respect to the
25 types of feeders and waterers the grower would use?

Deposition of Ray Wear - Taken July 26, 2007

39

1 Was that change negotiated?

2 A. No.

3 Q. Rather than go through all of these changes, let me
4 just simply ask, were any of the changes between the old
5 contract and the new contract negotiated with the grower?

6 A. No.

7 Q. Were any terms under any contracts Peterson ever had
8 with any of its growers negotiated with the individual
9 grower?

10 MR McDANIEL: Object to the form.

11 A. Not to my knowledge.

12 Q. (Mr. Riggs continued.) Since Evans & Evans has been
13 in the position you've told me about, have any of the
14 contracts -- terms been negotiated with any of the
15 growers?

16 A. No.

17 Q. All of the growers who are under contract to
18 Peterson Farms or Evans & Evans who raise broilers raise
19 them under the same contract terms.

20 A. Yes.

21 Q. So there are no separate contracts for any
22 individual growers. Correct?

23 MR. McDANIEL: Object to the form.

24 A. I believe there is now.

25 Q. (Mr. Riggs continued.) Tell me about those.

Deposition of Ray Wear - Taken July 26, 2007

56

1 A. I'm not familiar with that, if there was.

2 Q. There was a communication also that required them to
3 have alarm systems. Do you remember that?

4 MR. McDANIEL: I'm going to object to the
5 form.

6 Q. (Mr. Riggs continued.) Okay. This might be out of
7 your area anyway.

8 A. It's -- it's really not in my area.

9 Q. Okay. That would be Mr. Houtchens?

10 A. Yes.

11 Q. Any questions about how growers are paid for their
12 work, would that be Mr. Houtchens' area?

13 A. No. That's in the contract.

14 Q. Okay. Are any of those terms regarding how payment
15 is to be calculated negotiated with the grower?

16 A. No.

17 Q. So the grower couldn't negotiate a different method
18 of payment?

19 A. No.

20 Q. Could he negotiate the price he's charged for the
21 feed?

22 A. No. All growers are charged the same amount.

23 Q. They don't negotiate that amount?

24 A. No.

25 Q. Could a grower negotiate to be allowed to have

Deposition of Ray Wear - Taken July 26, 2007

57

1 higher temperatures in his house to save himself money?

2 MR. McDANIEL: Object to the form.

3 A. That's more Kirk's area there. I -- I'm not a
4 chicken grower.

5 Q. (Mr. Riggs continued.) Okay. He can't negotiate
6 who owns the dead chickens, can he?

7 A. No.

8 Q. He can't negotiate the ingredients in his feed?

9 A. No.

10 Q. Can he negotiate who has responsibility for the
11 poultry litter produced in the growing operation?

12 A. No.

13 Q. Has that ever been negotiated with any grower?

14 A. It's -- not to my knowledge, no.

15 Q. So if Mr. King, on Exhibit 23, is the person who
16 wrote the note, "Do not agree," and made the arrow over
17 to, "shall be responsible for the litter," he could not
18 have negotiated that agreement with you.

19 A. That is correct.

20 Q. The company.

21 A. But if he had any issues with the litter, we would
22 help him.

23 Q. In what way?

24 A. We have hauled litter for people before out of the
25 watershed.

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA
3
4

5 W. A. DREW EDMONDSON, in his)
6 capacity as ATTORNEY GENERAL)
7 OF THE STATE OF OKLAHOMA and)
8 OKLAHOMA SECRETARY OF THE)
9 ENVIRONMENT C. MILES TOLBERT,))
10 in his capacity as the)
11 TRUSTEE FOR NATURAL RESOURCES)
12 FOR THE STATE OF OKLAHOMA,)

13 Plaintiff,)
14)

15 vs.)

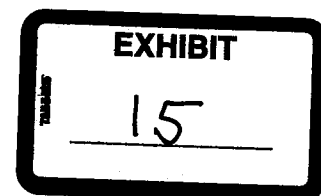
16 4:05-CV-00329-TCK-SAJ)
17)

18 TYSON FOODS, INC., et al,)
19)

20 Defendants.)
21)
22)
23)
24)
25)

26 -----
27 VOLUME II OF THE VIDEOTAPED
28 30(b)(6) DEPOSITION OF TIM ALSUP, produced as a
29 witness on behalf of the Plaintiff in the above
30 styled and numbered cause, taken on the 25th day of
31 June, 2008, in the City of Tulsa, County of Tulsa,
32 State of Oklahoma, before me, Lisa A. Steinmeyer, a
33 Certified Shorthand Reporter, duly certified under
34 and by virtue of the laws of the State of Oklahoma.
35

TULSA FREELANCE REPORTERS
918-587-2878



1 Q Let me ask it this way then: How are the
2 records created that shows the total number of birds
3 that are in fact produced by Cargill; how does that
4 start to get into the computer?

5 MR. WALKER: Object to the form. 09:57AM

6 A When a flock is placed, I believe the flock is
7 given a number, and when given a number, for lack of
8 a better -- I'm not an accountant -- an account is
9 set up, and as that flock is grown, as it receives
10 feed or whatever that flock receives, it goes into 09:57AM
11 that account. Is that what you're talking about?

12 Q Now, who determines how many -- who counts the
13 birds that are placed?

14 A Who counts them?

15 Q How does the computer know the number of birds 09:57AM
16 placed without somebody putting it in there?

17 A It's entered.

18 Q And that's my question. Who determines the
19 amount of birds?

20 A The -- well, every flock -- every contractor 09:57AM
21 has a contract that states the amount of birds that
22 we're going to place, and then as they come up for
23 placement and it's their turn, they get put on a
24 placement schedule.

25 Q Let me ask my question again. How do you know 09:58AM

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

VOLUME I OF THE VIDEOTAPED
30(b)(6) DEPOSITION OF TIM ALSUP, produced as a
witness on behalf of the Plaintiff in the above
styled and numbered cause, taken on the 24th day of
June, 2008, in the City of Tulsa, County of Tulsa,
State of Oklahoma, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

16

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TIM ALSUP

having first been duly sworn to testify the truth,
the whole truth and nothing but the truth, testified
as follows:

DIRECT EXAMINATION

BY MR. GARREN:

Q Mr. Alsup, please state your name for the
Record, please.

A Tim Alsup.

Q All right, and have you ever given a 09:11AM
deposition before?

A Yes, sir.

Q And how many depositions have you given?

A One.

Q And was that the one in the City of Tulsa case 09:11AM
in August of 2002?

A Yes, sir.

Q All right. No other depositions in either
civil or criminal matters?

A No, sir. 09:12AM

Q Okay. I'm going to be asking questions today.
If you don't understand my questions, please ask me
to rephrase them or reword them so that you can, so
that we can get a clear understanding between
ourselves to what I'm asking and what your answers 09:12AM

TULSA FREELANCE REPORTERS
918-587-2878

1 are. All right? If we need to take a break, we
2 can. We'll break generally every hour because of
3 changing the tape.

4 A Okay.

5 Q So we usually use that as time to refresh or 09:12AM
6 do whatever you need to do.

7 A Okay.

8 Q All right. Identify your current employer,
9 please.

10 A Cargill Turkey Production, LLC. 09:12AM

11 Q How long have you been employed with the
12 Cargill Turkey Production, LLC?

13 A Four years.

14 Q Were you employed then at the time of its
15 inception? 09:12AM

16 A The inception of Cargill?

17 Q Cargill Turkey, LLC.

18 A Yes, sir.

19 Q All right. Who did you work for before that?

20 A Cargill, Incorporated. 09:12AM

21 Q We'll come back to that and let me ask you
22 about your education. You have a degree in poultry
23 science from the University of Arkansas; is that
24 correct?

25 A Yes, sir. 09:13AM

TULSA FREELANCE REPORTERS
918-587-2878

1 of the top or if a varmint can get in there and
2 scratch around on it and dig in it, then I mean
3 that's part of their on-the-job training when
4 they're learning how to be a flock supervisor.

5 Q Who then would provide that training to a 09:38AM
6 flock supervisor in the Cargill entity?

7 A The production manager is their direct
8 supervisor.

9 Q All right, and who would be the production
10 manager in the Springdale complex today for the LLC? 09:38AM

11 A Jason Witt.

12 Q All right, thanks. It's correct, is it not,
13 that flock supervisors visit generally weekly or
14 more often for the farms under their care or
15 supervision? 09:39AM

16 A Yes, sir.

17 Q And when those flock supervisors make these
18 inspections or visits, do they prepare and fill out
19 a report each time?

20 A I do not know about each time, but they do 09:39AM
21 fill -- a lot of the times there is a report, a
22 visitation report filled out.

23 Q All right, and as part of their duties and
24 responsibilities in making the inspection at the
25 various grow-out facilities, do they check on the 09:39AM

TULSA FREELANCE REPORTERS
918-587-2878

1 temperature controls in the barn?

2 A If there is a temperature -- if they feel it's
3 too hot or too cold, they may check on it, yes.

4 Q So they actually take some temperature, do
5 they not?

09:40AM

6 A Yes, sir.

7 Q All right, and some of these temperature
8 controls are by computer as I understand it; is that
9 true?

10 A There are some contract farming operations
11 that have computer controls, yes.

09:40AM

12 Q So if need be, though, he would adjust those
13 controls if he thought it was important to do so?

14 A Only -- there's two instances, one, if he has
15 a good enough relationship with a grower -- if the
16 grower is not around -- if the grower is there, they
17 don't, but if the grower is not there and it looks
18 like the birds may be in a little distress because
19 they're too hot, he may adjust the fans to get some
20 more air. He'll note it if that's what you're
21 talking about.

09:40AM

09:40AM

22 Q That's fine. If the grower is in fact there,
23 though, he would speak with the grower and ask him
24 to make that adjustment; correct?

25 A Yes, sir.

09:41AM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q Likewise, the flock supervisor would check
2 water supplies to the birds on these inspections?

3 A Yes, sir. They look to see if there's water
4 available for the birds.

5 Q And if there are issues or problems with 09:41AM
6 regards to the water supplies, they would make the
7 adjustment or ask the grower to make adjustments;
8 correct?

9 MR. WALKER: Object to the form.

10 A If there is no water, let's say, they would 09:41AM
11 try to go find the grower. You're getting into the
12 well and electrical and that, but they probably
13 wouldn't know what adjustments to make, but if it
14 was -- if a waterer was overflowing, let's say, and
15 causing a spill, they could pinch the hose off and 09:41AM
16 so it wouldn't get any bigger and then would tell
17 the grower that, yes.

18 Q The birds drink from a nipple; is that
19 correct?

20 A Only in -- only in some of the brooder houses. 09:42AM
21 The --

22 Q If those nipples are not at the proper height
23 for the birds, would a flock supervisor either
24 adjust them or ask the grower to adjust them?

25 MR. WALKER: Object to the form. 09:42AM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Yes, sir.

2 Q In addition to preparing this report, he would
3 speak to the grower about things that may or may not
4 be on the report; correct?

5 A Yes, sir, they do visit with the growers. 09:46AM

6 Q Is it part of the flock supervisor's duty to
7 check every subject matter or item that are listed
8 on the forms that have those check boxes or spaces?
9 For example, we're looking at 10918. We see

10 basically seven items here, temperature, 09:46AM
11 ventilation, water, feed, litter, biosecurity and
12 curtain drop; do you see those subjects?

13 A Yes, sir.

14 Q Is it generally the responsibility of a flock
15 supervisor to check each of those items at each 09:46AM
16 inspection?

17 A He will -- everything except the curtain drop.
18 That's only done -- I believe at this time they were
19 doing it two times a year, testing them one to two
20 times a year. 09:47AM

21 Q So at those times a flock supervisor would
22 test whether the curtains drop and raise properly;
23 is that what I understand you to say?

24 A Yes, sir.

25 Q All right, but other than that, the rest of 09:47AM

TULSA FREELANCE REPORTERS
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1 was some standards set out for maybe what proper
2 housing was, and I think it had to do with
3 equipment, insulation, stoves, things of that
4 matter.

5 Q And you say at one time there were standards. 10:01AM
6 Do you know what time roughly we would be -- that
7 this live production service manual that we're
8 looking at, Exhibit 27 would have come into being
9 and use?

10 A It looks like it would have been in use in the 10:01AM
11 '90's.

12 Q Okay. Going to the next page, 142602, which
13 is the second page of the document, standards for
14 proper house preparation 2A, it says wet and cake
15 litter removed; do you see that? 10:02AM

16 A Yes, sir.

17 Q All right, and that's something that Cargill
18 would expect to occur. Is that what I understand
19 this to tell us?

20 A It is a practice to remove the cake litter, 10:02AM
21 caked litter.

22 Q Okay, and go to the next page, which is Page 3
23 of the document, Item C1. It says under litter
24 management, wet and caked litter should be removed
25 when recommended by supervisor. Do you see that? 10:02AM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Yes, sir.

2 Q All right, and the supervisor it's referring
3 to here would be the flock supervisor; correct?

4 A Yes, sir.

5 Q All right. The next page in this document, 10:02AM
6 it's Page 142604. This says Class B housing
7 standards. So do I understand that there are --
8 this says improper housing. Do you understand what
9 that is telling us in this manual?

10 A If they did not meet the requirements for the 10:03AM
11 Class A housing, it would have been put into this
12 category.

13 Q All right. So then these are criteria then
14 that need to be accomplished in order to have a
15 Class B housing; is that what I understand? 10:03AM

16 A Yes, sir.

17 Q Whose responsibility is it to communicate
18 the -- whether a grower has houses that qualify
19 under the Class A or Class B housing requirements?

20 A That -- I don't believe that is being used, 10:04AM
21 but at that time in the '90's, it would have been
22 the flock supervisor and the grow-out manager,
23 production manager.

24 Q Look at the next page, 142605. Are you there?
25 House preparation and sanitation of brooder house. 10:04AM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Yes, sir.

2 Q Tell the court what a brooder house is.

3 A A brooder house is the house that baby turkeys

4 or poults are delivered to. They -- it's not like

5 chickens where they go to all the houses. They go 10:04AM

6 to a specific house.

7 Q Okay, and Item 4 of this particular page, it

8 says in the second sentence of that paragraph, if

9 there has been no health problems with previous

10 flock, litter may be reused, but consult your flock 10:05AM

11 supervisor on what should be done before any is

12 removed. Is that still the condition or did that

13 continue to be a condition for Cargill growers?

14 MR. WALKER: Object to the form.

15 A The brooder -- the litter in the brooder house 10:05AM

16 is now used in the grow-out. It's just -- the birds

17 are real small in a brooder house, so it's mainly

18 just shavings. So looks like at this time they were

19 even reusing it because it was still mainly shavings

20 but -- 10:05AM

21 Q I'm sorry. Go ahead.

22 A But now that litter is -- that bedding and

23 litter material is used in the grow-out house.

24 Q Understanding that, though, this says he

25 should consult to the flock supervisor when it's 10:05AM

TULSA FREELANCE REPORTERS
918-587-2878

1 removed; will you agree with that?

2 A Yes, it does say that.

3 Q We need to stop and change our tape and take a
4 break.

5 VIDEOGRAPHER: We're now off the Record. 10:06AM

6 We're off at 10:05 a.m.

7 (Following a short recess at 10:06
8 a.m., proceedings continued on the Record at 10:10
9 a.m.)

10 VIDEOGRAPHER: We are back on the Record. 10:10AM

11 The time is 10:10 a.m.

12 Q Mr. Alsup, you may close that one, and I'll
13 hand you a new exhibit, No. 28. It's a turkey
14 management handbook, Cargill live production team,
15 Springdale, dated 1990 to '91, and it starts at 10:11AM
16 Bates number 229516. Is this the grow-out
17 management manual that is provided to growers that
18 you referred to earlier in your testimony?

19 A This is -- this would have been given to them,
20 yes. 10:11AM

21 Q Okay. Do you know how long this particular
22 version was used by Cargill?

23 A No, sir.

24 Q Do you know whether or not this particular
25 version that we're looking at has been since revised 10:12AM

**TULSA FREELANCE REPORTERS
918-587-2878**

1 Q All right. So I said service tech. Is that
2 what you also know to be a similar name for a flock
3 supervisor?

4 A Yes, sir.

5 Q All right, and I apologize for using a 10:16AM
6 different one, but it seems to be interchangeable
7 from what I'm understanding, but even though they
8 may prepare it, is it expected that the flock
9 supervisor have a working knowledge of the grower
10 manual that's provided to its growers? 10:16AM

11 A They do have a working knowledge.

12 Q Look at page Bates number 229541. It's Page
13 26 of the actual document. This has a revision date
14 it looks like coded at the bottom October 1, 1990.

15 Do you see that? 10:17AM

16 A Yes, sir.

17 Q All right, and in Paragraph B of this
18 particular page, it says remove and spread all caked
19 litter from house, and then it also says in the
20 parenthesis there, do not pile outside of house 10:17AM
21 unless 100 feet away from the house or houses and
22 coughed to prevent groundwater contamination from
23 rain runoff; do you see that?

24 A Yes, sir.

25 Q All right. Can you tell me why Cargill would 10:17AM

TULSA FREELANCE REPORTERS
918-587-2878

1 require the pile to be 100 feet away from the
2 houses?

3 A Biosecurity.

4 Q All right, and the biosecurity is to protect
5 birds? 10:17AM

6 A Bird health.

7 Q Okay. It's not there to protect humans also?

8 A No. It's bird health.

9 Q Okay, and when it says it's to be covered to
10 prevent groundwater contamination from rain runoff, 10:17AM
11 what is that attempting to tell the grower; what do
12 you understand that to mean?

13 A At that time there was some nitrogen concerns,
14 and my terminology that was given to me at the time
15 was Blue Baby. If nitrates got in the well water, 10:18AM
16 it could cause a condition called Blue Baby, and I
17 don't know about that, but that would have been to
18 address -- I think that Blue Baby thing started with
19 commercial fertilizer and crops, but litter does
20 have nitrates in it, so there was a some -- there 10:18AM
21 may even have been some studies going on or federal
22 and state and local governments were looking at it,
23 but that's what that's addressing.

24 Q Were flock supervisors then advised to watch
25 for these particular instructions and see that 10:18AM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q And when you say them, are you talking about
2 the grower or the banker?

3 A We give it to the grower but -- the future --
4 the possible future grower, but they need something
5 to go to the bank with. 10:25AM

6 Q All right. In order to help secure financing
7 to build and have a grow-out facility?

8 A Yes, sir.

9 Q Or a growing facility?

10 A Yes, sir. 10:25AM

11 Q All right. Let's go back now, if you would,
12 to near the front of the document at 144352. It has
13 selecting turkey house site. What is the reason
14 under Provision B that no greater than 50 road miles
15 from Cargill feed mill; what is the reason for that? 10:25AM

16 A At that time I believe in '02 Cargill had that
17 distance from the mill setup, that we really didn't
18 want to go beyond 50 miles from the mill.

19 Q Is that specification different today for the
20 LLC? 10:25AM

21 A Yes, sir.

22 Q What is it today?

23 A I don't know if there's a specific. We have
24 farms further than that now.

25 Q And when you have a new farm come online, do 10:26AM

**TULSA FREELANCE REPORTERS
918-587-2878**

1 those two that you identified that were --I believe
2 those were involved with Cargill, Inc.; correct?

3 A Uh-huh.

4 Q So those wouldn't be applicable for the LLC
5 questions. Has the LLC disciplined any of its
6 growers for failing to adhere to any environmental
7 laws, rules or regulations?

11:03AM

8 A No, sir.

9 Q Prior to July 1, 1998, did Cargill know what
10 its growers, contract growers did with the poultry
11 waste that was produced by the birds in the barn?

11:04AM

12 A Specifically, no.

13 Q Generally did they know what was done with the
14 poultry waste that was removed prior to 1998?

15 MR. WALKER: Object to the form.

11:04AM

16 A Generally Cargill understood that the turkey
17 litter was being utilized either by them or others
18 as a fertilizer.

19 Q In fact, we saw a document earlier here today
20 that said they should clean out and spread it, and
21 we talked about that being spread on the land;
22 correct?

11:05AM

23 A Yes, sir.

24 Q Okay. Would you agree with me that since 1998
25 Cargill's knowledge, that general knowledge about

11:05AM

TULSA FREELANCE REPORTERS
918-587-2878

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE VIDEOTAPED DEPOSITION OF
RONALD MULLIKIN, produced as a witness on behalf
of the Plaintiff in the above styled and numbered
cause, taken on the 14th day of November, 2007, in
the City of Tulsa, County of Tulsa, State of
Oklahoma, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

17

1 A No.

2 Q At the time you gave your deposition in that
3 case, were you employed by Peterson Farms?

4 A I was not.

5 Q You previously had been an employee of 02:13PM
6 Peterson Farms?

7 A That's correct.

8 Q And that is the Peterson entity that you were
9 employed by, Peterson Farms, Inc.?

10 A Yes. 02:13PM

11 Q When was that period of employment?

12 A I believe it was from October or November of
13 '97 to approximately August of 2000.

14 Q So approximately three years?

15 A Yeah. It's been long enough ago I might be 02:13PM
16 off a year when I started.

17 Q Do you understand, sir, that as an attorney
18 for the State of Oklahoma here today my position in
19 this litigation is adverse to that of your former
20 employer, Peterson Farms, Inc.? 02:13PM

21 A Yes, I do.

22 Q Do you have any -- well, let me ask it
23 differently. Are you employed in any capacity by
24 Peterson Farms today?

25 A No, I am not. 02:14PM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q What was your initial position with the
2 company and what duties did that position entail?

3 A I originally was hired by Peterson Farms to be
4 their director of corporate training. We had
5 trainers at the plant. We had trainers in the 02:14PM
6 hatcheries and other areas of the company that I
7 would supervise those people and get involved with
8 other training, things that were needed throughout
9 the company, other exercises.

10 Q Did your duties change during the period of 02:14PM
11 time you worked for Peterson?

12 A Yes, they did. I had been there probably
13 about, I don't know, three or four months and was
14 asked to attend a meeting at Simmons Foods in Siloam
15 Springs with Janet Wilkerson. Janet came to know me 02:14PM
16 a little better and understand that I had worked
17 with my father in a number of other companies in a
18 fertilizer business in Iowa, and because I knew a
19 little bit about fertilizer and crop production, she
20 thought maybe I could go to that meeting and 02:15PM
21 possibly shed some light on what was going on.

22 Q So did that lead to a change in your duties?
23 I think that's what you were explaining.

24 A Yeah, it did. Excuse me. After that meeting
25 and a couple of other subsequent meetings, they 02:15PM

TULSA FREELANCE REPORTERS
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1 asked me to really take the lead in going to the
2 meetings and becoming involved with what was going
3 on between the City of Tulsa, the various state and
4 federal agencies and Peterson Farms.

5 MR. RIGGS: Excuse me. Did we have 02:15PM
6 somebody else join us by phone? I guess not.

7 Q Did you acquire a different job title?

8 A I was known then as the director of corporate
9 training and environmental affairs and then later on
10 was also -- had the title of personnel. 02:16PM

11 Q Okay. What were your duties at the time you
12 left the company?

13 A I had those three titles, director of
14 corporate training, director of environmental
15 affairs and director of personnel. 02:16PM

16 Q Okay. Can you give me a brief summary of your
17 educational background?

18 A Went to high school, went to just a short time
19 at a community college up in Iowa and then have
20 taken a number of courses, and that's really about 02:16PM
21 it.

22 Q Okay. You did not obtain a degree from --

23 A No.

24 Q -- a higher education?

25 A No. 02:17PM

TULSA FREELANCE REPORTERS
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1 worked in my department, I had them track it, but I
2 don't recall, sir, what numbers we ended up with, if
3 we got 100 percent compliance or not.

4 Q Okay. Now, since Mr. Henderson says this
5 would be to help determine how many tons of litter 03:06PM
6 cannot be applied in the coming spring, we can
7 conclude from that I believe, do you agree with me,
8 that it had already been determined that too much
9 litter was being applied to pasture lands in 1998?

10 MR. McDANIEL: Object to the form. 03:06PM

11 A We felt as though because of the length of
12 time that poultry litter had been applied to many of
13 these pasture lands, that there very well could be
14 growers that had phosphate levels when they went in
15 to do their nutrient management plans that were in 03:06PM
16 excess of the threshold I had talked about and we
17 would need to know where they were going to have
18 excess tonnage so we could try and help them find a
19 home for it.

20 Q Okay. 03:07PM

21 MR. RIGGS: We'll take a break now.

22 VIDEOGRAPHER: We are now off the Record.

23 The time is 3:07 p.m.

24 (Following a short recess at 3:07 p.m.,
25 proceedings continued on the Record at 3:13 p.m.) 03:13PM

TULSA FREELANCE REPORTERS
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1 VIDEOGRAPHER: We are back on the Record.

2 The time is 3:13 p.m.

3 Q Mr. Mullikin, before the break, in fact early

4 in your testimony you mentioned some of your duties

5 included training. Did you provide any training to 03:13PM

6 the flock supervisors at Peterson Farms?

7 MR. McDANIEL: Object to the form.

8 A Yeah. There was some training classes that

9 they would have attended.

10 Q What does the term flock supervisor mean to 03:14PM

11 you?

12 A I had never heard it used until today, so --

13 Q Okay. Field man, is that a term you are

14 familiar with?

15 A Uh-huh, uh-huh. 03:14PM

16 Q Was that the term used within Peterson to --

17 A I believe so.

18 Q What did the field man do for Peterson?

19 A He is responsible for a group of growers, got

20 involved with I guess feed supplements and best 03:14PM

21 practices within whatever it is that the growers do

22 to produce their flocks.

23 Q Okay. He's the guy who goes to the grower's

24 farm periodically to observe the flock to see how

25 well they're doing and make sure they're being taken 03:14PM

**TULSA FREELANCE REPORTERS
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1 care of properly?

2 A That's my understanding.

3 Q Is that position also referred to as a service
4 technician?

5 A I believe so. 03:15PM

6 Q Okay. When you did communicate with or
7 participate in training of these service technicians
8 or field men, did any of that training include
9 providing them information about protecting water
10 quality? 03:15PM

11 A I don't recall.

12 Q Did you provide them any kind of environmental
13 information?

14 A I don't recall specifically, no.

15 Q The article that we have been talking about, 03:15PM
16 which is Exhibit 1 to your deposition, I asked you I
17 think if it had been published. Let me ask you a
18 little more about that. Do you know if it was
19 circulated within the company, Peterson?

20 A I know that Janet Wilkerson saw a copy of it. 03:16PM

21 Q Okay. Do you know if anyone else did?

22 A No, I don't know.

23 Q Did you discuss it with her?

24 A I believe so.

25 Q Do you recall anything she had to say about 03:16PM

TULSA FREELANCE REPORTERS
918-587-2878

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE DEPOSITION OF JOEL REED,
produced as a witness on behalf of the Plaintiff in
the above styled and numbered cause, taken on the
11th day of June, 2007, in the City of West Siloam
Springs, County of Delaware, State of Oklahoma,
before me, Lisa A. Steinmeyer, a Certified Shorthand
Reporter, duly certified under and by virtue of the
laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

18

1 Q I'm sorry. What integrator did you first work
2 with?

3 A George's.

4 Q And the time frame you worked with George's is
5 what? 09:08AM

6 A '87 to '90.

7 Q Were you growing broilers?

8 A Yes.

9 Q And were you growing those at the same
10 location where you are today? 09:08AM

11 A Yes.

12 Q Have you worked for any other integrators
13 besides George's and your current integrator?

14 A Than my current integrator?

15 Q Yes, other than the one you are working for
16 now? 09:09AM

17 A No.

18 Q And the one you are working for now is who?

19 A Simmons.

20 Q And you've worked continuously for Simmons
21 since 1990 or sometime after? 09:09AM

22 A Yes, yes.

23 Q I sometimes talk a little fast and when we do
24 the deposition, I need to -- you need to wait until

25 I finish my answer and I'll try -- or finish my 09:09AM

TULSA FREELANCE REPORTERS
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1 A No.

2 Q So when they're delivered to you, you've not
3 had any choice in the kind of bird that comes to
4 you; is that correct?

5 A That's correct. 10:02AM

6 Q Who supplies all the feed to your farm for the
7 birds?

8 A The integrator does.

9 Q Both of them?

10 A Yes. 10:02AM

11 Q Who delivers the feed to your farm?

12 A Simmons and George's.

13 Q Who supplies medication for the birds when in
14 your care?

15 A The integrators. 10:02AM

16 Q Who supplies any vaccinations required for the
17 birds?

18 A The integrators.

19 Q Do you pay for any of the medication or
20 vaccinations that are administered to the birds? 10:03AM

21 A No.

22 Q Who supplies any veterinary services that you
23 may require for the birds?

24 A The integrators do.

25 Q Do each of the integrators supply you with a 10:03AM

TULSA FREELANCE REPORTERS
918-587-2878

1 field service rep or a service tech person?

2 A Yes.

3 Q And have they always done that?

4 A Yes.

5 Q How often do you see that service tech? Let 10:03AM

6 me ask you this: How do you refer to that person

7 that comes to see your farm?

8 A Field man.

9 Q Field man?

10 A Yeah. 10:03AM

11 Q How often would a field man come to see you

12 when you were with George's?

13 A Usually once a week.

14 Q And is that the same with Simmons?

15 A Yes. 10:03AM

16 Q Do they come more often if needed?

17 A Yes.

18 Q When they do come more often, it's because you

19 requested it or they just came or both?

20 A Usually because I requested it. 10:03AM

21 Q Do you receive advice and recommendations from

22 the field man with regard to your operations?

23 A Yes.

24 Q Do you generally try and follow that advice?

25 A Sometimes. 10:04AM

TULSA FREELANCE REPORTERS
918-587-2878

1 Q Do the field men make a physical inspection of
2 your operation when they come?

3 MR. WISLEY: Object to form.

4 Q Do the field men make a physical inspection of
5 your growing operation when they come to see you? 10:04AM

6 MR. WISLEY: Same objection.

7 A Yes.

8 Q Tell me what it is they look at.

9 A Usually just the performance of the birds, how
10 they look, the air quality, anything that might need 10:04AM
11 attention as far as feeders, waterers, temperature.

12 Q All right. Do they take a physical
13 temperature reading when they are there?

14 A No.

15 Q Do you have a thermometer inside that would 10:05AM
16 indicate the temperature inside the barn?

17 A Yes.

18 Q Do they make notes of that when they're there?

19 A Yes.

20 Q Do they prepare a written report for you on 10:05AM
21 their visits?

22 A Yes.

23 Q What happens to that report?

24 A I usually throw it away.

25 Q What's that report called? 10:05AM

**TULSA FREELANCE REPORTERS
918-587-2878**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE DEPOSITION OF JIM LANCE
PIGEON, produced as a witness on behalf of the
Plaintiff in the above styled and numbered cause,
taken on the 25th day of May, 2007, in the City of
West Siloam Springs, County of Delaware, State of
Oklahoma, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

19

1 grower in December of '95?

2 A No. It was prior to that.

3 Q Prior to that?

4 A Yes.

5 Q All right. Identify, if you would, please, 09:15AM

6 each of the integrators that you have worked for in

7 providing poultry growing operations.

8 A I don't think I understand.

9 Q Have you had more than one integrator that you
10 provided poultry products to? 09:16AM

11 A Yes.

12 Q All right. Name those entities.

13 A Peterson Farms and Tyson Foods.

14 Q What were the years that you operated a farm
15 for Peterson Farms? 09:16AM

16 MR. BOND: Object to the form.

17 A I believe I raised chickens for Peterson from
18 December of '95 to February or March of 2004.

19 Q And that was a continuous time frame that you
20 worked growing chickens, providing chickens to 09:16AM
21 Peterson Farms?

22 A Yes.

23 MR. WILLIAMS: What was the date again;
24 from when to when? I'm sorry.

25 MR. GARREN: He testified 12-95 to 2 or 3 09:16AM

TULSA FREELANCE REPORTERS
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1 of '04.

2 Q Did you immediately then begin producing
3 poultry products for Tyson on or about February or
4 March of '04?

5 A Yes, I did. 09:17AM

6 Q And have you continuously worked then for
7 Tyson -- have you continuously grown chickens for
8 Tyson since that time?

9 A Yes, I have.

10 Q Let me hand you what's been marked as Exhibit 09:17AM
11 No. 1 and this I'll represent to you is a copy of
12 the subpoena with the attachment that was provided
13 to your counsel. Have you seen this document
14 before?

15 A Yes, I have. 09:17AM

16 Q I'm going to refer you to the exhibit that's
17 attached to that document and I'd ask you to tell me
18 if there's any category by the number listed there
19 that would indicate documents you either did not
20 find or did not produce in your document production 09:18AM
21 pursuant to the subpoena.

22 A Okay. I'm sorry. Could you repeat your
23 question?

24 Q What I'm trying to determine is what documents
25 you didn't have or you didn't produce and then I'm 09:22AM

TULSA FREELANCE REPORTERS
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1 MR. HIXON: Object to form.

2 A I'm sorry, could you ask that again?

3 Q Do the service techs advise you on changes you
4 should make in your growing operation when they come
5 to see you?

10:43AM

6 MR. HIXON: Object to form.

7 A Yes, they would.

8 Q Is that the same for both Peterson and Tyson
9 in your experience?

10 MR. BOND: Object to form.

10:44AM

11 A Yes.

12 Q When a service rep would come to your farm, is
13 it typical that on the report that they fill out it
14 shows where they have checked the temperature and
15 the controls of the temperature of the barns?

10:44AM

16 MR. BOND: Object to form.

17 A What are you asking?

18 Q Do the service techs check the temperature in
19 the barns when they come and inspect your
20 facilities?

10:44AM

21 A Yes.

22 MR. BOND: Object to form.

23 Q And does Peterson and Tyson both do that,
24 their service reps?

25 A I'm sure they do, yes.

10:44AM

TULSA FREELANCE REPORTERS
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1 Q And do the service reps for both Tyson and
2 Peterson when they inspect check the ventilation of
3 the barns?

4 MR. HIXON: Object to form.

5 A I'm sure they do, yes. 10:45AM

6 Q All right. Do you know that they do that or
7 are you just surmising?

8 A I assume that they all do, having been a
9 service tech myself.

10 Q And they leave reports sometimes checking 10:45AM
11 where they have checked the box where the
12 ventilation is good or poor for something like that;
13 correct?

14 A Sometimes they do, yes.

15 Q All right. When the service reps come, do 10:45AM
16 they check the water supply to the birds?

17 MR. HIXON: Object to the form.

18 A I can't say whether they do or not.

19 Q Do they indicate on any kind of form that they
20 have when they've left the form with you after an 10:45AM
21 inspection?

22 MR. HIXON: Object to form.

23 A I think there is a spot on the service report
24 for that, but to know exactly or specifically that
25 they have checked, I can't say. 10:46AM

**TULSA FREELANCE REPORTERS
918-587-2878**

1 Q If they've checked it that they have, you
2 would think they had, wouldn't you?

3 A I would assume they have.

4 Q But both Tyson and Peterson have some similar
5 form that they fill out indicating that they may 10:46AM
6 have checked water supply, do they not?

7 A I believe so.

8 Q And, likewise, when Peterson and Tyson service
9 reps come, do they also check the feed delivery
10 mechanism system for the birds? 10:46AM

11 MR. HIXON: Object to form.

12 A Again, having been a service tech myself, I
13 would assume that they do.

14 Q All right, and as far as you know, Tyson and
15 Peterson both do that? 10:46AM

16 MR. HIXON: Object to form.

17 A I would assume so.

18 Q Do you have any information that indicates
19 they haven't?

20 A Any information? 10:47AM

21 Q Yeah, or facts that would support that they
22 don't do that?

23 MR. HIXON: Object to form.

24 MR. BOND: Object to form.

25 A No. 10:47AM

**TULSA FREELANCE REPORTERS
918-587-2878**

1 Q All right. When service reps for either
2 Peterson and/or Tyson come, in your experience have
3 they left comments that might recommend certain
4 maintenance chores they would like to see you
5 perform? 10:47AM

6 MR. HIXON: Object to form.

7 A Sure.

8 Q Who supplies the bird catchers at the end of
9 grow-out in order to gather the flock for removal?
10 MR. BOND: Object to form. 10:47AM

11 A The integrator has crews for that purpose.

12 Q Are you charged a fee for those catchers to
13 come and pick up those birds?

14 A Not that I'm aware of.

15 Q And that's by either Tyson or Peterson? 10:48AM

16 A Correct.

17 Q Does Peterson Farms, when you worked for them,
18 did they provide you grower manuals or handbooks?

19 A I believe they did.

20 Q Does or did Tyson supply you grower manuals or 10:48AM
21 handbooks?

22 A Yes, they did.

23 Q Do the integrators, either Tyson or Peterson,
24 conduct any tests on the birds, such as blood tests
25 or other microbiology tests, while they're in your 10:48AM

TULSA FREELANCE REPORTERS
918-587-2878

1 Peterson?

2 A I think so.

3 Q All right. Is this something that Peterson
4 gave to you?

5 A Since it has Peterson Farms at the top, I 10:58AM
6 would assume, yes, it does.

7 Q Okay. Looking at the second paragraph
8 underneath the chart, it says and I'll read, houses
9 are to be decaked between every flock; do you see
10 that? 10:59AM

11 A Yes.

12 Q Is that something that you were supposed to do
13 when you worked for Peterson?

14 MR. HIXON: Object to form.

15 MR. WILLIAMS: Same objection. 10:59AM

16 A That's something that was recommended.

17 Q Did you in fact do that?

18 A I can't say with 100 percent certainty that
19 the time period I was with Peterson that I did
20 decake between every flock. 10:59AM

21 Q Generally is that what you did do, though?

22 A Generally, yes.

23 Q Would you preheat a house 48 hours in cool
24 weather and 24 hours in warm weather prior to the
25 placement of any chicks? 11:00AM

**TULSA FREELANCE REPORTERS
918-587-2878**

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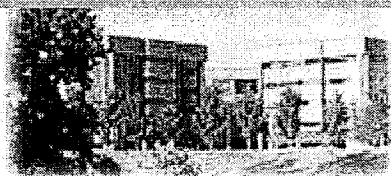
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1



Company Information

FAQs about Tyson Independent Poultry and Hog Growers

What are the requirements for becoming a grower for Tyson?

A. Tyson growers are located within what we call complexes—areas of operations, each of which includes a feedmill, a hatchery, at least one processing plant and the offices of the people who provide technical assistance to the growers. Tyson has twenty-eight such poultry complexes in the United States and six live swine complexes (the live swine complexes don't include processing facilities). Normally the farms are required to be within thirty to forty miles of the feedmill in the complex.

Does Tyson own the property these farms are on?

A. No, the farms are owned by the contract growers.

Who provides what in this contract relationship?

A. Tyson provides the birds, the feed and the technical assistance to raise the birds. The grower provides the facility, the labor, and utilities.<

What if feed prices go up or the price of chicken meat goes down?

A. One of the good things about the contract relationship is that it insulates the grower from these variables by guaranteeing a consistent price for his efforts, no matter what feed or grocery markets are doing.

Is Tyson looking for new growers?

A. At this time, most of our complexes are adding very little production and have waiting lists of people wanting to become new growers or to expand their existing operations.

How would I find out if Tyson is adding new growers in my area?

A. Call the complex administration for the area in which you're interested. Phone numbers are listed [here](#).

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EXHIBIT

20

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.) 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE DEPOSITION OF BOBBY
WILLIAMS, produced as a witness on behalf of the
Plaintiff in the above styled and numbered cause,
taken on the 13th day of November, 2007, in the City
of Tulsa, County of Tulsa, State of Oklahoma, before
me, Lisa A. Steinmeyer, a Certified Shorthand
Reporter, duly certified under and by virtue of the
laws of the State of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878

EXHIBIT

21

1 Q Okay. Any other formal education after grade
2 eleven?

3 A No.

4 Q Tell us what you presently do for your work or
5 business.

11:06AM

6 A I run a dairy farm and a beef farm, and we
7 have milk route running; we haul milk.

8 Q Do you have a name for this business?

9 A W-5 Will Farms.

10 Q W5 Will Farm?

11:07AM

11 A W-5 Will Farms, Inc.

12 Q Is that an Oklahoma corporation?

13 A Yes.

14 Q The land that W-5 Will Farm, Inc., is located
15 on, is that the same land you gave me of your Route
16 1, Box 527 address?

11:07AM

17 A Yes.

18 Q Do you personally own that land, you and/or
19 your wife, or does the W-5 Will Farm corporation own
20 the land there?

11:07AM

21 A My wife and I own it.

22 Q Okay. Have you ever been a contract poultry
23 grower?

24 A Yes.

25 Q Tell me what dates starting and ending that

11:07AM

TULSA FREELANCE REPORTERS
918-587-2878

1 you were a grower.

2 A Well, I started I think in 1977 and I quit I'm
3 pretty sure between 1986 and '88, and I don't
4 remember for sure when.

5 Q Okay. Who were the -- what was the name of 11:08AM
6 the integrator that you grew birds for?

7 A I grew for Hudson first, and then I switched
8 to Cargill and grew for them, and then I grew --
9 Cargill sold out to Tyson I think. Anyway, I grew
10 for Tyson until I quit. 11:08AM

11 Q All right. When you operated as a poultry
12 grower, what kind of birds did you grow?

13 A Broilers, and then at the end before we quit
14 we were growing the Cornish.

15 Q Cornish hens? 11:08AM

16 A Yes.

17 Q So during the time that you worked for
18 Cargill, which kind of birds were you growing?

19 A Broilers.

20 Q And did you grow broilers or the Cornish for 11:08AM
21 Hudson or both?

22 A Broilers.

23 Q So towards the end when you were growing
24 Cornish, that would have been for Tyson?

25 A Yes. 11:09AM

TULSA FREELANCE REPORTERS
918-587-2878

1 A Right.

2 MS. THOMPSON: Object to the form.

3 Q When you operated for the Cargill integrator,
4 did you have a written contract?

5 A Yes, should have, best I remember. 11:14AM

6 Q Okay. Did you have written contracts with
7 Hudson?

8 A I suppose so. I can't remember all the
9 details. That's been too long ago, but you
10 basically have to have a contract to grow. 11:15AM

11 Q When you have one of those contracts, are you
12 allowed to negotiate any of the terms of those
13 contracts with the integrator?

14 A Not that I know of.

15 Q Did Cargill supply you a flock supervisor when 11:15AM
16 you were growing for Cargill?

17 A The field man, is that what --

18 Q Yes, sir.

19 A Yes.

20 Q And how often would he come around? 11:15AM

21 A Usually once a week.

22 Q Is that the same for Hudson and for Tyson; did
23 you have the same kind of operation with them?

24 A Yes.

25 Q Did Cargill have any rules regarding how and 11:15AM

TULSA FREELANCE REPORTERS
918-587-2878

1 when you would clean out your poultry barns when you
2 operated it for them?

3 A Usually they required you clean out once a
4 year.

5 Q Were those rules any different with Hudson or 11:15AM
6 Tyson?

7 A No.

8 Q Do you know whether Cargill knew generally
9 what you did with the poultry waste when you removed
10 it from the barns? 11:16AM

11 MS. SOUTHERLAND: Object to the form.

12 A I don't really know because they never did
13 ask.

14 Q All right. Did you ever tell the flock
15 supervisor or the field man what you were doing with 11:16AM
16 the poultry waste?

17 A No.

18 Q Did they ever observe you cleaning out your
19 barns?

20 A No. 11:16AM

21 Q How many tons would you pull out of your barns
22 each time you would do a clean-out?

23 A I don't rightly know. I never did weigh it.

24 Q Did you count the loads you would pull out?

25 A Well, when I cleaned out, back then I just had 11:16AM